

A4E'S POSITION ON CONSULTATION AND TRANSPARENCY REQUIREMENTS FOR THE DETERMINATION OF AIRPORT CHARGES

SUMMARY

This paper sets out A4E's position on consultation and transparency requirements for the determination of airport charges. A4E seeks to lower the cost of the EU's airports by ensuring that monopoly airports are effectively regulated, that passengers receive the full benefit of the non-aeronautical revenues which they generate at airports, and that charges are cost-related, efficient and non-discriminatory. A4E calls for reform of the legislation governing airport regulation in Europe and for a more effective regulation of monopoly airports.

In its current state, the EU Airports Charges Directive 2009/12/EC (ACD) is inadequate and ineffective in protecting airport users and consumers from airports' abuses of their market power, notably in the process for setting airport charges. The purpose of economic regulation is to replicate the outcomes achieved in a competitive market, however the ACD fails to achieve this, in particular, the ACD fails to address the asymmetry of information between airports and airport users that is required to allow for meaningful consultations and eventually agreements.

In the experience of A4E's members, European airports that enjoy significant market power (i.e. monopoly airports) fail to adequately consult with airport users on their cost base and investment plans which form the basis of the charges which airlines and their passengers have to pay. Unnecessary investments, operational and cost inefficiencies and high – often pre-determined – returns have all resulted in increasing airport charges, even in cases of increased traffic volumes without additional investments.

An effective consultation process would ensure that airports with significant market power constructively engage with airport users in order to establish the infrastructure and service quality that passengers require and are willing to pay for. A transparent process would ensure that airport users are clear about the cost basis on which charges are set and the efficiency of the underlying costs and services.

An effective and meaningful consultation process would ensure that the following elements are addressed:

- Consultation meeting dates and topics should be pre-agreed;
- Information should be provided by the airport to the airport users in advance of any consultation meeting;
- Consultations on any airport expenditure should occur regardless of whether there is a proposed change in the level of airport charges;
- Any airport user should be permitted to participate in the consultation process;
- Airports must demonstrate how users' views have been reflected in any final proposal;
- English should be used to allow all airport users to participate;
- The process should be overseen by an independent regulator.

Airports should provide a justified link between costs and charges which includes:

- Traffic forecasts;
- Full breakdown of operating costs and efficiencies;



- Investments including well-reasoned justification for proposed investments and updates on work in progress;
- Asset base and full profile of depreciation;
- Breakdown of the parameters and methodology for the calculation of the cost of capital;
- Non-aeronautical revenues;
- If relevant, the methodology employed to allocate assets, costs and revenues between the different activities;
- Service quality targets, measurement and performance;
- Any other information that users might reasonably request.

Consultation discussions should be meaningful and transparent:

- Consultations should be a constructive and open dialogue with the airport and airport users;
- All information provided by airports to users should be transparently disclosed;
- All items related to the setting of airport charges should be openly discussed;
- Airports should provide evidenced answers to queries raised by airlines;
- The minutes of meetings should be circulated and be accessible to all users;
- An independent regulator should oversee the consultation process.

A4E believes that in its current state, the ACD is inadequate and ineffective as it only deals with the procedural aspect of consultation and does not protect airlines and their passengers from abuses of market power by airports. The ACD fails to provide the right framework for incentivising airports to be efficient and for preventing excessive charging and excess profitability. In fact the Directive fails to require that airport charges should be cost related and based on efficient cost, and it fails to specify the appropriate level of transparency that would encourage cost based charging and cost efficiency.

A4E believes that the ACD should be reformed and, in order to guarantee effective transparency over costs and revenues to address the asymmetry of information between airports and users, that a meaningful consultation process should be established which requires a review of the ACD's provisions on consultation and transparency.

Airlines for Europe (A4E) is Europe's new and largest airline association, based in Brussels. Launched in January 2016, the association consists of Aegean, Air France KLM, easyJet, Finnair, International Airlines Group (IAG), Jet2.com, Lufthansa Group, Norwegian, Ryanair, TAP Portugal and Volotea, and plans to grow further. With more than 500 million passengers on board each year, A4E members account for more than 60 per cent of the continent's passenger journeys, operating more than 2,500 airplanes and generating EUR 97 billion in annual turnover.

INTRODUCTION

Airport charges account for about 20% of airlines' total cost. In order to protect the interests of passengers and ensure value for money, it is therefore vital that charges are justified and linked to efficient costs. In monopoly airports, charges should be set by an independent regulator in a transparent process which should include a structured and meaningful consultation between the airport and the airlines on service quality, investments, efficient costs and a reasonable return for the airport.

The EU Airports Charges Directive 2009/12/EC (ACD) was intended to set minimum requirements on consultation and transparency in order to reduce the asymmetry of information between airports and users, and to compensate for the market power of the airport as the sole infrastructure provider at a given city or in a given region.

However, the practical application of the ACD by several Member States is falling short of these requirements. In fact, the inconsistent transpositions of the ACD at national level have prevented airlines from being transparently and meaningfully consulted on the level of charges by creating process-focused frameworks, and information asymmetries have not been alleviated. This is the case for instance in certain Member States where the profile of the charges is fixed in the legislation or long-term concession agreements with limited or no possibility for airlines to be effectively consulted.

As a result, the ACD has failed to provide an appropriate framework to ensure that airport operators are efficient, and that charges are linked to costs so that the excessive charging of passengers is avoided.

CURRENT SITUATION UNDER THE ACD

Consultation

Article 6 of the ACD sets out the procedural aspects of a consultation:

- Consultations shall take place at least once a year (Art. 6(2), first sentence);
- Wherever possible, changes to the system or the level of airport charges are made in agreement between the airport managing body and the airport users (Art 6(2)). This applies regardless whether charges are set following an appeal procedure according to Art. 6(3) and 6(4) or following the obligatory charges setting procedure according to Art. 5(5);
- If an agreement between the airport and its users exists, the frequency of the consultations depends on the agreed timeline (Art. 6(1), second sentence);
- Users' views have to be taken into account by the airport (Art. 6(2), third sentence);
- Airport charges have to be approved by an independent supervisory authority (ISA) in case of the obligatory procedure or in case of an appeal;
- Regarding the timeline, the airport has to submit its proposal to the regulator no later than four months before the airport charges enter into force, unless exceptional circumstances (Art. 6(2), second sentence);
- The airport has to publish its decision or recommendation no later than two months before its entry into force (Art. 6(2), fourth sentence);

- If there is no agreement with the users, the airport has to justify its decision with regards to the dissenting views (Art. 6(2), fifth sentence);
- Airlines can have recourse to the ISA to examine the justifications for the modification of the system or the level of airport charges (Art. 6(3)).

Further, Article 8 requires that airports consult with users on new infrastructure plans before they are finalised. Finally, Article 11 elaborates on the role of the ISA, and emphasizes the need for the ISA to get all necessary information from all parties concerned in order to be able to make its decision (Art. 11(7)). The ISA's decision is then to be published and binding for all parties concerned.

Transparency

Article 7 of the Directive sets out the minimum transparency requirements in terms of the information airports have to provide users with during the consultations. In particular, the ACD stipulates that transparency is necessary to fulfil the objectives of the consultation process.

CURRENT IMPLEMENTATION OF THE ACD

Consultation

The practical implementation of the ACD in several Member States is currently falling short of ensuring that users are consulted on the level of charges in a meaningful way. While some countries, such as the UK and the Netherlands, already had regulatory frameworks in place prior to the adoption of the ACD, allowing for a structured discussion between the airport and the airlines on the parameters feeding into the level of the charges, other Member States have instituted “process-focussed” frameworks where little or no room for input is afforded to users. This is the case for instance in Member States where the profile of the charges is fixed in the legislation or long-term concession agreements.

In fact, the ACD fails to provide guidance on a number of key issues including the topics to be consulted on, timelines, language, who can attend the meetings, the level of transparency necessary and how users' views should be taken into consideration, etc. Airlines are also often invited to consultations where they either are not provided with the relevant information ahead of the meeting or only at short notice. As a consequence, airlines do not have enough time to prepare properly, and in depth discussions cannot take place during the consultation meeting. In addition, such meetings often last no longer than a couple of hours and are immediately followed by the airport's request to approve the proposed charges. Finally, there have been cases where in certain countries the ISA does not even attend the consultation meeting.

This type of behaviour makes it impossible for users and airports to “negotiate” or to even have a meaningful discussion. Inversely, in countries where more active regulation prevails, a series of detailed meetings often take place, focusing on specific topics discussed among experts.

The ACD requires that airports “take [airport users] views into account before a decision is taken”. Yet commonly, this merely implies inviting users to a consultation meeting, listening to their comments but, eventually, validating the level of charges that were presented at the beginning of the process, regardless of users' input. In effect, the ACD allows airports to disregard users' views in their final decision. It is indeed

rather exceptional that, following the views expressed by users, airports come back on their initial proposal to substantially discuss adaptations or to address new topics.

The ACD is unfortunately vague on airline's right to appeal an airport's decision to not modify the level of charges. Indeed, Article 6(2) of the ACD could be interpreted as implying that there is no need for consultation if there is no change to the level of charges. Yet airlines should still have the opportunity to discuss the level of charges even if the airport is proposing to keep charges stable as traffic trends and efficiencies can lead to reductions in charges as has been seen at some airports. If the evolution of circumstances suggests that airport charges should be reduced, but the airport does not propose any changes in the level of charges, users have absolutely no possibility to express their views. A mere obligation to hold at least one mandatory consultation meeting does not improve such a situation.

When it comes to cases where there is a concession agreement between Members States and airport managing bodies, in which changes in the system or level of charges are already predetermined and are therefore not determined in relation to costs, they render the entire consultation process meaningless. This occurs for instance in Portugal.

In its current state, the ACD is inadequate and ineffective as it only deals with the procedural aspect of consultation, and does not protect airport users and consumers from airports' abuses of their market power.

Transparency

Most regimes have turned the minimum level of transparency required by the ACD into an absolute maximum. This minimum level of transparency does not protect users from monopoly airports abusing their dominant position. Indeed, consultations held by airports are often mere presentations of pre-set charges, without users being able to have a meaningful discussion and to influence the outcome.

Airports often present airport users and the ISA with a single overall cost that supposedly reflects airports' expenses (e.g. opex, capex, depreciation, etc.), without any breakdown of the costs, or further detail on each cost element. With such scarce information, neither the ISA nor the airlines are able to assess whether charges are efficient and cost-related. This also applies to the parameters used to set the Weighted Average Cost of Capital (WACC), which should require a high degree of transparency in the information provided by airports. This is particularly the case when airports operate under a hybrid or dual till system, where they fail to provide deeper insights into the costs and assets of each till.

WHAT AIRLINES NEED

Consultation

A4E believes that the consultation process should be used for a constructive discussion between airports and airport users, and should not just be limited to a discussion on the level of charges. Such consultations must occur over several meetings where experts discuss and elaborate on specific and pre-agreed topics. There should not be any pre-determined outcomes to these meetings. Further, airlines should be given the possibility to request that consultation take place in cases where charges are kept constant. The ISA should have oversight of timelines, and it should ensure that all relevant topics are covered.

Prior to undertaking the charges consultation process, the airport should consult with users on the airport's master plan. This should include a thorough discussion of the proposed master plan, and a cost-benefit analysis of any investment proposed therein, and the resultant impact on airport charges. This would ensure that any investment that affects airport charges is the most efficient and reflects passengers' needs and their willingness to pay.

Before each consultation, airlines should be provided with adequate information in order to effectively engage in discussions with the airport. They should be given appropriate time to request more explanations if necessary. Such information should include but not be limited to:

1. Traffic forecasts, at least for the consulted period;
2. Full breakdown of operating costs and efficiencies;
3. Investments including well-reasoned justification for proposed investments and updates on work in progress;
4. Full breakdown of asset base and full profile of depreciation;
5. Breakdown and reasoning of the parameters and methodology for the calculation of the cost of capital;
6. Non-aeronautical revenues regardless of the till applied;
7. If relevant, the methodology employed to allocate assets, costs and revenues between the different activities;
8. Service quality targets, measurement and performance;
9. Any other information that users might reasonably request.

Consultations must be meaningful and transparent. They should not resemble one-way public hearings, but be real two-way discussions. All items related to charges should be openly discussed, in English, as the international language of aviation, to allow meaningful participation by non-national carriers. Both individual airlines and airline associations should be allowed to participate. Airports should provide evidenced answers to questions raised by airlines, and airlines and associations should have access to the minutes of meetings.

Experience has shown that open dialogue is inadequate, as it fails to guarantee that airports will take into account airline's input. Airports should therefore demonstrate how users' views are reflected in any final outcomes, and if not, they should provide thorough justification. When an agreement cannot be reached, a mandatory review (or at the very least an appeal mechanism) to a fully independent and effective authority must be available. This independent authority should use a clear set of criteria to base its decisions, and users as well as airports must be allowed to appeal against the decision.

Finally, when it comes to investments, airports should provide users with a cost-benefit analysis of the options envisaged. Since airlines and their passengers are the end-users of airport infrastructure, any decision on the appropriate balance between quality of service and price should be taken together and not solely by the airport.

Transparency

A4E believes that airports should provide detailed information on the key elements which feed into the setting of charges level (mainly regarding airport's traffic forecasts, operating costs, capital expenditure, asset base, depreciation, cost of capital, revenues, cost and asset allocation). The industry has already provided

many examples and guidelines on what information and what level of information is relevant and why it needs to be made transparent.

It is only by having access to a high level of transparency that airlines can fully understand the airport's proposal, and that a meaningful discussion can take place (i.e. as occurs in competitive environments). Therefore, one has to clearly distinguish between:

- understanding why costs have been determined in one way or another; and
- deciding whether the used method of determining cost, etc. is efficient and based on the relevant criteria.

ANNEX 1

The chart below is a good example of a consultation process, while however not necessarily being best practice.

