

A4E'S POSITION ON AIRPORT MARKET POWER

SUMMARY

This paper sets out A4E's position on the issue of airport market power. A4E seeks to achieve reasonable airport charges as the basis for EU aviation competitiveness. In order to do so, airports in the EU must be effectively regulated, passengers must receive the full benefit of the non-aeronautical revenues which they generate at airports, and charges must be cost-related, efficient and non-discriminatory. A4E calls for reform of the EU Airport Charges Directive 2009/12/EC (ACD) and for a more effective regulation of monopoly airports.

A4E believes that in its current state, the ACD is inadequate and ineffective as it only deals with the procedural aspects for setting airport charges and does not protect airlines and their passengers from airports abusing their market power. Indeed, the ACD does not provide for any regulation that replicates the effects of competition, and it has failed to provide a framework to prevent excessive charging and excess profitability.

A4E believes that regulation should apply to all airports which enjoy significant market power in order to ensure that airports do not abuse their monopoly position and that charges are reflective of efficient costs. Airports with market power are able to act independently of airlines and their passengers with the ability to charge excessively and earn excess profits, operate inefficiently and invest unnecessarily while providing poor quality of service. The ACD should therefore be reformed to include a provision that regulation should apply to all airports with significant market power.

Market power should be assessed by independent, effective and well-resourced regulators on a case by case basis for airports that do not meet the obligatory scope of a reformed ACD. Without market power assessments, there is a risk that monopoly airports are not appropriately regulated in Europe. Airports that apply a dual till should per se be subject to regulation as dual till is a clear indicator for abuse of market power.

Airlines for Europe (A4E) is Europe's new and largest airline association, based in Brussels. Launched in January 2016, the association consists of Aegean, airBaltic, Air France KLM, Cargolux, easyJet, Finnair, Icelandair, International Airlines Group (IAG), Jet2.com, Lufthansa Group, Norwegian, Ryanair, TAP Portugal and Volotea, and plans to grow further. With more than 550 million passengers on board each year, A4E members account for more than 70 per cent of the continent's journeys, operating more than 2,700 airplanes and generating more than EUR 100 billion in annual turnover.

INTRODUCTION

In its current state, the EU Airports Charges Directive 2009/12/EC (ACD) is inadequate and ineffective in protecting airport users and consumers from abuses of market power by airports. While the intention was to establish a common framework for regulating the charges-setting process by providing basic requirements to address imbalances between airports and their users, especially when dealing with airports with market power, the ACD falls well short of this objective.

Economic regulation is required when dealing with airports that enjoy significant market power (SMP) in order to replicate the outcomes of a competitive market. Only by establishing an adequate and effective framework for dealing with the risks of abuse of dominance can airports be better regulated.

A4E believes that the issue is not about the exact number of airports in Europe that are monopolies, nor about arbitrarily setting new thresholds triggering the application of the ACD. Airports which enjoy SMP need effective regulation as they face very limited competition for passengers, airline customers and routes.

FRAMEWORK FOR ADDRESSING AIRPORT MARKET POWER

The provisions of the ACD apply to all European airports whose annual traffic is over five million passenger movements, and to the airport with the highest passenger movement in each Member State (Art. 1.2). Airports which do not meet these thresholds are excluded from the scope of the ACD.

The ACD makes no provision for taking account of an airport's market power when deciding whether and how to regulate. As a result, most Member States give little or no consideration to the market power of airports, which can result in abuses such as excessive charging, discrimination and inefficient costs. The risk of abuse is not being assessed and there is no clarity over the overall scale of regulatory intervention required.

Outside of the obligatory scope of the ACD, strong, robust, independent and effective economic regulation is also needed. Regulation should only be imposed where it is required, and it should apply regardless of an airport's ownership and governance structure.

REFORM OF THE ACD

The European Commission's current evaluation of the ACD should focus on how monopoly airports and airports which enjoy significant market power should be better regulated.

Regulation should be imposed on airports with significant market power over airlines and their passengers. The ACD should therefore be reformed in order to include obligatory economic regulation for all airports that enjoy significant market power, regardless of their size.

In particular, airports where airlines have significant operations and which are essential to their network (such as hubs), airports with the highest passenger movements in a Member State, airports that serve the same city or conurbation and that are owned and/or operated by the same managing body, airports that operate at full capacity, and airports that apply the dual till principle or any other principle that excludes non aeronautical revenues in the setting of charges certainly have market power. Airports serving major cities and/or very specific niche markets are also likely to have market power.

Many of these airports currently fall under the scope of the ACD, and they should continue to be regulated under a reformed ACD. Other airports should be examined on a case by case basis and regulated if necessary. This would necessitate an assessment of the market power of the airport, carried out by an independent national regulator.

Both airports and users should be able to ask the regulator to conduct a market power assessment to establish whether or not regulation is required, while having the right to appeal the regulator's decision. In case of appeal, the burden of proof would lie with the party contesting the regulators decision.

Most Member States benefit from airport profits themselves, either directly as whole or part-owner of the airports, or indirectly by selling the airport or by offering concession/operating contracts to private entities. Therefore Member States often lack an independent process for carrying out market power assessments of airports leading to adequate regulation. In addition, most airport charges regulators in Europe lack the resources and expertise to carry out market power assessments.

In order to ensure that regulation is applied, the test of airports' SMP must be carried out by national regulators that are fully independent, effective, well-resourced, and appropriately staffed and skilled to perform of their duties. This independent regulator would notify the European Commission of which airports located on its national territory would be subject to regulation under a reformed ACD.

ASSESSING AIRPORT MARKET POWER

Assessing whether an airport has market power can therefore be essential in preventing abuse. A market power assessment should consider a number of factors in establishing whether or not an airport has SMP over its airlines and passengers.

The willingness of passengers to switch to other airports: In the experience of A4E's members, passengers prefer to travel from their local airport, and their choice of origin and destination is usually fixed. In addition, passenger decisions are driven by a multitude of factors such as airline routes, schedules, airline loyalty, distance to the airport and available fares, meaning that airlines are the ones competing for the passenger, not the airport itself.

The availability of alternative airports: It is often suggested that airlines can switch airports but they could be prevented from doing so due to a number of factors, such as previous investments in airports, the importance of particular airports to their network, the availability of capacity, the location of any alternatives and significant costs associated with staff reallocation, and marketing that could have implications on profitability. In fact, an airline will only switch airports if it believes that the revenues associated with the switch will outweigh its costs.

ROLE OF THE EUROPEAN COMMISSION IN DETERMINING MARKET POWER

A4E suggests that the European Commission should act as a central point of resource for the assessment of the market power of airports. As such, national regulators would be able to turn to the Commission for support and expertise when it comes to assessing the market power of airports.

In addition, the Commission should be granted regulatory oversight, as is the case in other regulated sectors where market analysis and the assessment of significant market power may be required. There are indeed well-established frameworks providing for market power assessments in other regulated sectors – such as the telecom, energy and audio-visual sectors – and A4E encourages the Commission to assess the provisions of the ACD against well-functioning economic regulation in other sectors and the tools that these contain to achieve fares that are based on efficient costs.