



**WORKING PAPER**

**CONFERENCE ON THE ECONOMICS OF AIRPORTS AND  
AIR NAVIGATION SERVICES**

**Montréal, 15 to 20 September 2008**

**Agenda Item 3: Specific issues related to air navigation services economics and management**

**Agenda Item 3.1: Governance, ownership and control**

**GOVERNANCE, OWNERSHIP AND CONTROL  
OF AIR NAVIGATION SERVICES PROVIDERS**

(Presented by the Secretariat)

**SUMMARY**

This paper discusses recent experiences of commercialization of air navigation services providers (ANSPs) and the emerging issues associated with their governance, ownership and control. These experiences indicate that there may be a linkage between performance achieved and corporate governance. The paper, therefore, develops a set of best practices for good governance of commercialized ANSPs. In circumstances where the State directly operates air navigation services, the paper emphasizes the necessity to ensure that regulatory and operational functions are not provided by the same authority.

Action by the Conference is in paragraph 5.

**1. INTRODUCTION**

1.1 While air navigation services providers (ANSPs) with private sector ownership, in whole or in part, remain limited to a handful of examples, many States have established autonomous entities by separating the provision of services from the executive arm of the State and by allowing them to commercialize their activities. Paragraph 11 of *ICAO's Policies on Charges for Airports and Air Navigation Services* (Doc 9082) recommends the establishment of autonomous entities to operate air navigation services where this is in the best interest of providers and users.

1.2 This paper discusses recent experiences of commercialization of ANSPs and the emerging issues of their governance, ownership and control. It also reviews the current relevant text of Doc 9082.

## 2. DISCUSSION

2.1 The move towards commercialization of ANSPs has been driven by diverse motives, ranging from improving operational efficiency and reducing costs to a more pragmatic desire to relieve the State of the responsibility for financing infrastructure capital investments. Whatever the reason is, a commercialized ANSP is expected to operate as a financially independent business entity and to be as competitive, efficient and cost-effective as any other commercial business.

2.2 A number of recent studies conducted by academics, governments and industry organizations have looked at the governance, institutional and regulatory frameworks that exist, including comparisons of the commercialized ANSPs. Although these studies are not necessarily unanimous in their conclusions, they tend to agree that commercialized ANSPs have generally improved cost control, productivity through modernization, and financial viability, without compromising safety. The studies also indicate that commercialized ANSPs can take timely decisions and are more responsive to users' needs. In addition, there is a common observation among the studies that better performance is achieved as a result of good "corporate governance".

2.3 The term corporate governance refers to the way in which the board oversees the running of a company by its management, and how the board is in turn accountable to shareholders and to the different stakeholder groups. Corporate governance principles and codes have been developed worldwide. Some of the most influential guidelines are the *Principles of Corporate Governance* (2004) by the Organization for Economic Co-operation and Development (OECD). The application of the OECD principles and the results of recent studies on the commercialization and privatization of ANSPs may serve as the basis for the establishment of the best practices needed to ensure good corporate governance of commercialized ANSPs. These include:

- a) clearly defined objectives and responsibilities as set out in a legislation or license;
- b) an equitable treatment of shareholders and protection of shareholders' rights (where all or a part of the capital is held by private shareholders);
- c) an independent, professional supervisory board to provide overall direction to the management;
- d) empowered and accountable management to make timely decisions regarding finances, operations, technology, human resources, investments and services in line with corporate objectives and board directions;
- e) good relationship with all interested parties through consultation; and
- f) timely and accurate disclosure of information to enhance transparency.

2.4 Currently, paragraph 17 of Doc 9082 deals with best commercial practices in a general context. With the purpose to improve performance of ANSPs, a specific recommendation on the application of best practices of good corporate governance should be included. The text of paragraph 17 recommends that best commercial practices should be applied in areas such as quality of services, investments, accounting and development plans. Considering that some of these areas are covered by other relevant paragraphs of Doc 9082 (for example, quality of services and investments are dealt with in paragraph 16) and that, best commercial practices can be applied to many other areas as well, it is not necessary to single them out in this context. (As discussed in WP/7, best practices for good governance for airports are identical to those for ANSPs.)

2.5 The best practices of good governance discussed above could equally apply to non-autonomous ANSPs, as the performance of service providers is more related to good governance than to the ownership and control structure. In many instances, however, a State authority does have inherent limitations that must be overcome (for example, cumbersome approval and lengthy procurement processes, and competition with other State priorities for investments). Furthermore, when a government plays both the role of regulator (i.e. performing its economic oversight functions) and service provider, the authority of one branch to monitor the activities of the other may be unclear. Too close a relationship between the service provider and the regulator can result in conflicts of interest and undermine confidence in the system.

2.6 For that reason, it is crucial for States that have not yet established autonomous entities to operate air navigation services, to adhere to the current policy in paragraph 11 of Doc 9082. Where States choose not to establish autonomous providers of air navigation services, it is desirable, at least, that a clear functional separation of the regulator and the service provider be made, with roles and powers clearly defined for each one. In order to emphasize the need for such a separation, paragraph 15 of Doc 9082 should be amended accordingly. It is noteworthy that the proposed amendment to paragraph 15 is common to both airports and air navigation services because the same rationale applies to both types of service providers (see WP/7).

### 3. CONCLUSIONS

3.1 From the foregoing discussion, the following conclusions may be drawn:

- a) Where air navigation services are provided directly by a government branch, States should ensure that regulatory and operational functions are not performed by the same authority.
- b) States should review the governance structure with regard to their ANSPs, and make use of the best practices of good corporate governance with regard to objectives and responsibilities, shareholders' rights and their treatment, responsibilities of the board, power and accountability of the management, relationship with interested parties, and information disclosure.
- c) ICAO should amend Doc 9082 to emphasize the importance of separation of regulatory and operational functions and to include the components needed to ensure good governance through the application of best commercial practices.

### 4. PROPOSED AMENDMENTS OF POLICIES

4.1 In accordance with conclusion c) of paragraph 3.1, it is proposed that the text in the current paragraphs 15 and 17 of Doc 9082 be replaced with the following text:

*15. The Council considers it important that States exercise their economic oversight responsibility functionally separated from the operation and provision of airports and air navigation services, not least in situations where autonomous entities have not been established.*

***Best commercial practices***

17. *The Council endorses the application of principles of best commercial practice for airports and air navigation services in order to promote transparency, efficiency and cost effectiveness in the provision of an appropriate quality of services and facilities. Best commercial practices should therefore be applied by States and/or airport and air navigation services providers in all areas of their business. The Council observes that good corporate governance of airports and air navigation services entities leads to better performance and recommends therefore that States, in particular, apply best commercial practices of good corporate governance with regard to: objectives and responsibilities of the entities; shareholders' rights and their treatment; responsibilities of the board; power and accountability of the management; relationship with interested parties; and disclosure of information.*

4.2 It should be noted that in WP/4, it is proposed that two new paragraphs under the new sub-title "Economic oversight" be inserted between the current paragraphs 14 and 15 (with the above new text proposed for the current paragraph 15). The above new text for paragraphs 15 and 17 is also proposed in WP/7.

**5. ACTION BY THE CONFERENCE**

5.1 The Conference is invited to:

- a) review and adopt the conclusions in paragraph 3.1; and
- b) review and endorse the proposed amendments of Doc 9082 in paragraph 4.1.

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