



Agenda Item 2A: Competitiveness

AIRPORTS AND ANSP REGULATION

(Presented by IATA)

SUMMARY

ICAO's Doc 9082 outlines the key principles for cost recovery of airport and air navigation facilities and services through charges. This working paper, to be discussed at RAAC/18, highlights the importance of States adhering to these principles, and the need for effective regulation, particularly where:

- The regulator is independent of the State.
- The regulator has a mandate to protect users/consumers.
- The regulator has powers to regulate all aspects of a regulated firm, including prices, quality, investments, and the list of regulated activities.
- The regulator can investigate and sanction regulated companies.
- The regulator is sufficiently staffed (number and competence).

Additionally, regulatory decisions should be subject to legal appeal or challenge. States should avoid pre-determining elements of infrastructure or charges in privatization or concession agreements that contradict ICAO policies.

References:

- Doc9082 - ICAO's policies on charges for airport and air navigation services
- *Balanced Concessions for the Airport Industry*. Deloitte & IATA
[balanced-concession-for-the-airport-industry.pdf](https://www.iata.org/contentassets/fa95ede4dee24322939d396382f2f82d/airport-ownership-regulation-booklet.pdf)
- *Airport ownership and regulation*
<https://www.iata.org/contentassets/fa95ede4dee24322939d396382f2f82d/airport-ownership-regulation-booklet.pdf>

ICAO Strategic Objectives:

A: Competitiveness
 D: Governance

1 Introduction

1.1 Establish an independent regulator.

1.1.1 To fulfill its economic oversight responsibilities under section 1.5.2 of ICAO Doc 9082¹, States should establish a robust, independent, proportionate, and effective economic regulatory framework for airports and ANSPs. This framework is essential to protect users from potential abuse of dominant market position and to ensure cost-effective charges.

1.1.2 The regulator must be independent of the airports, ANSPs and the State, both organizationally and financially.

1.1.3 The regulator should have sufficient financial and human resources to execute its duties effectively.

1.1.4 The regulator must have the authority to intervene as needed to fulfil its mandate, including setting charges and adapting service quality, investments, and operating efficiency. Concession agreements should not constrain the regulator's ability to fulfill its mandate.

1.1.5. The regulator must have scope over and be able to require adaptations to the quality of service, investments, efficient operating expenses, and have the power to set charges.

1.2 Ensure ICAO policies are respected.

1.2.1 ICAO's Doc 9082 outlines key principles for cost recovery through charges, including non-discrimination, cost relatedness, transparency, and consultation with users/airlines. States should incorporate these four key charging principles into their national legislation, regulation, or policies to ensure compliance by airport operators and air navigation services providers.

1.2.2 Adherence to ICAO's policies is essential to prevent anti-competitive behavior and ensure fair, transparent, and equitable cost recovery. (s) and/or monopolistic behavior airport.

1.2.3 Concession agreements, notably in Latin America, have shown inconsistencies with ICAO policies including:

- i. Predetermined charges without consultation, or cost-relatedness and efficiency. Predetermined investments or service quality levels without adequate consultation. such limited consultation and lack of transparency. This notably includes consultation processes where the concession agreement prescribes the outcome, rendering them ineffective.
- ii. Cross subsidization. While a main concern is cases where international airlines may be forced to pay higher charges at airports with international traffic to subsidize domestic airports, international airlines also do not want to subsidize other airports to which they operate no services.

¹ Section 1.5.2 of ICAO Doc 9082 sets out such public policy objectives as the following:

"a) minimizing the risk of airports and ANSPs engaging in anti-competitive practices or abusing any dominant position they may have;

b) ensuring cost-relatedness, non-discrimination, transparency and consultation in the application and setting of charges;

c) ascertaining that investments meet current and future demand in a cost-effective manner;

d) promoting the efficient provision of airports and air navigation services; and

e) protecting the interests of passengers and other end-users."

- iii. Excessive concession fees. ICAO's policies explicitly oppose charging airlines solely for the right of entry, exit or transit through a country. While governments may seek to recover investments in infrastructure via concession fees charged to airport operators, agreements where significant upfront concession fees are paid to the State and then transferred to airlines by means of charges could be seen as a way of indirectly imposing such a fee on airlines.

1.3 Adapt regulation as needed based on market power.

1.3.1 Any decision related to the separation of the regulator from the operators, as well as decisions regarding the public or private management of airports and/or ANSPs, must be previously presented by the States, to be discussed and consulted with the industry. This includes discussion on the level of regulation applied to different airports.

1.3.2 While ICAO's policies allow for many forms of economic oversight, and IATA does not advocate for heavy-handed regulations, regulations should be commensurate with the level of market power of the service provider. There should be a mechanism in place for regularly reviewing the appropriateness of the level of regulation.

1.3.3 The form of ownership can impact the type of economic regulation required. Then changes in the regulatory framework because of a change in ownership should be consulted with airlines who are impacted directly by it.

1.3.4 IATA has published in collaboration with Deloitte, guidance on airport ownership and regulation as well as on airport concessions. We invite the States to review these documents and to involve IATA in policy development.

2 Discussion

2.1 As discussed above, Strong and independent regulation is key to ensuring airports and air navigation service providers operate efficiently to ensure States' competitiveness. Discussions with stakeholders and airline associations can facilitate the success of the process. It is important to review the framework for effective regulation regularly. IATA has extensive experience in this field to aid States:

2.1.1 IATA's team engages with more than eighty States or their infrastructure providers every year on charges-related matters.

2.1.2 IATA can share knowledge on systems in many countries of the world and is called on as a subject matter expert. Most regulatory experts have knowledge only of certain regions or a global knowledge on a theoretical level, while IATA is often involved in the regular engagements in these States.

2.1.3 In many cases, IATA engages in detailed design reviews of infrastructure and the financial evaluation of provider proposals, unparalleled by any organization globally.

2.1.4. There are many success stories to share resulting from IATA's involvement and advocacy in relation to airport and ANSP consultation, and regulatory processes as well as how to manage changes in infrastructure ownership.

3 Action by the meeting

3.1 The participants at RAAC/18 are invited to:

- a) Promote the adherence of ICAO charging principles by States, airports and ANSPs.
- b) Promote separation of regulatory and operational activities by States.
- c) Promote independent economic regulation.
- d) Promote inclusion of the different industry stakeholders when evaluating any changes in the regulation of infrastructure providers due to a change in ownership or concessions; and
- e) Ensure the State's National Aviation Authority or assigned regulator properly oversees these processes and intervenes to prevent an abuse of dominant position/monopoly power and/or non-adherence to ICAO's charging principles.

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