



## Case Study

*on Commercialization, Privatization and Economic Oversight of Airports and Air Navigation Services Providers*

# Germany

## Background (until the early 1990s)

At most airports in the Federal Republic of Germany, ownership has traditionally been shared between Land (State), Kreis (county), and/or Stadt (city). For reasons of expediency, the operation of airports was corporatized as limited liability companies (GmbH) or, as in the case of Frankfurt Airport, as joint stock companies (AG). The Federal Government has also owned shares in Cologne/Bonn, Frankfurt, Hamburg and Munich airports, as well as West Berlin's Tegel and Tempelhof airports. In the spring of 1991, Tegel, Tempelhof and East Berlin's Schönefeld were pooled within a single holding company, the Flughafen Berlin Brandenburg GmbH (FBB), which was owned by the Federal Government (26 per cent) and the States of Berlin and Brandenburg (37 per cent each).

Airports were required to submit their charges (take-off, landing, passenger facilities and aircraft parking charges) to the competent regulatory authority for approval under Section 43 of the Air Traffic Licensing Regulations. The State Governments normally regulated airport charges, with the Federal Government retaining a right of supervision. The law did not define exactly how airport charges should be regulated, but there was a common practice. In general, a single till approach was applied with regulation on the rate of return.

Before Germany's reunification, the provision of air navigation services was divided into three. In the Federal Republic of Germany, the Federal Administration of Air Navigation Services (BFS), a Federal Government agency, commenced its operation in July 1953. In the Democratic Republic of Germany, civil air traffic control had been performed by Interflug, a Government-owned national airline. Airspace around Berlin had been controlled by the United States, the United Kingdom, France and the Soviet Union. As a result of reunification in October 1990, air sovereignty was handed over to the Federal Government, and BFS assumed responsibility for the controlled air space of Berlin and the former Democratic Republic of Germany.

## Commercialization/privatization: Airports

In 1982, the Federal Government announced a program to privatize airports against the background of budget restrictions. Although for more than a decade nothing had happened, five out of 18 international airports have so far been partially privatized (in the form of minority private participation), namely, Düsseldorf, Hamburg, Frankfurt, Hanover, and Saarbrücken. Several regional airports were also privatized to a varying extent and some were totally in private sector hands. Frankfurt-Hahn, Lübeck, Mönchengladbach, Oberpfaffenhofen and Schwerin-Parchim are a few examples of such regional airports (Lübeck Airport passed back into the public sector in 2009 because the private operator (Infratil) failed to reach passenger targets; it was privatized again in 2013).

The first airport privatization project began in Berlin. In May 1996, the States of Berlin and Brandenburg and the Federal Government reached a consensus on the designation of Schönefeld as the primary airport for Berlin and Brandenburg and the plan to construct a new privatized international airport, Berlin Brandenburg International, at the Schönefeld site. The privatization process of FBB, which owns Berlin Brandenburg International Airport, started in

September 1997, but the process was terminated in May 2003 as a result of the private investor group pulling out. The construction of Berlin Brandenburg International started in 2006. The opening of the airport has been delayed since then; and no definite opening date has been announced.

In December 1997, Düsseldorf Airport became the first partially-privatized international airport in Germany. Airport Partners GmbH acquired a 50 per cent stake in the airport from the State of Nordrhein-Westfalen, with the City of Düsseldorf retaining 50 per cent. Airport Partners is a consortium of Hochtief AirPort and Aer Rianta (Dublin Airport Authority plc), which also acquired a 36 per cent stake in Hamburg Airport from the Federal Government and the State of Schleswig-Holstein in October 2000 (the City of Hamburg kept 64 per cent). Airport Partners' share in Hamburg Airport was increased to 49 per cent in August 2002 (Hochtief and its group company took over a share held by Aer Rianta in January 2007), while the City of Hamburg retains 51 per cent. Since partial privatization, both Düsseldorf and Hamburg airports have been operating in the form of a public-private ownership (PPP).

In June 2001, Frankfurt Airport went to the Frankfurt Stock Exchange with an initial public offering (IPO) after the transformation of its legal form into Fraport AG. Before the IPO, the airport was wholly owned by the Federal Government, the State of Hesse and the City of Frankfurt. After the IPO, private and institutional investors including employees acquired a 29.4 per cent stake. In October 2005, the Federal Government sold a 12 per cent stake (out of 18.2 per cent) and Lufthansa acquired a 4.95 per cent stake. Lufthansa soon increased this to 5 per cent and further to 9.1 per cent in March 2006. Currently, the major shareholders of Fraport are as follows: 31.4 per cent: State of Hesse, 20.1 per cent: City of Frankfurt via Stadtwerke Frankfurt am Main Holding GmbH, 10 per cent: Deutsche Lufthansa AG, 5.1 per cent: Julius Bär Holding. Remaining shares are held by private or institutional investors.

Although the private influence is indirect and limited, Fraport owns a 30 per cent stake in Hanover Airport (since 1998), and owned a 51 per cent stake in Saarbrücken Airport from 1997 to 2007. Fraport also owns 65 per cent stake in Frankfurt-Hahn Airport (since 1999), while Düsseldorf Airport owns a 70.03 per cent stake in Mönchengladbach Airport. Both are secondary airports in their respective regions and are served by low-cost carriers.

It should also be noted that Munich and Stuttgart airports remain public airports owned by joint local, regional and federal governments and managed by local governments.

### **Commercialization/privatization: ANSP**

After Germany's reunification, BFS was commercialized through the amendment of the German Constitution. In October 1992, the Deutsche Flugsicherung GmbH (DFS) was established as a limited liability company, which is wholly owned by the Federal Government and governed by Private Company Law. In January 1993, DFS formally succeeded BFS and commenced its operation. Since 1994, DFS has been responsible for performing not only civil but also regional military air traffic control.

In December 2004, the Federal Government announced a plan to change the ownership of DFS, selling 74.9 per cent of its equity to private investors and reorganizing it as a public-private partnership (PPP), along the line followed by the United Kingdom. The Parliament formally approved the proposal with the Air Navigation Services Act in April 2006. However, the privatization process was stopped by the President's decision in October 2006 because it conflicted with a constitutional clause, which says air traffic management within Germany must be carried out by a State organization.

### **Economic oversight: Airports**

Although Federal legislative, policy and supervisory functions are vested in the Ministry of Transport, Building and Housing (Bundesministerium für Verkehr-, Bau- und Wohnungswesen), administration and regulation are significantly devolved to the States. Under Section 43 of the Air Traffic Licensing Regulations, airport charges remain subject to traditional cost-based regulation with a single till approach. At a few airports involving private interests, however, incentive-based regulation such as price cap has been implemented.

In January 2000, the Germany's first price cap regulation was introduced for Hamburg Airport (a temporary price cap had been implemented for Berlin airports since the late 1990s and planned for the new BBI Airport, but was abandoned due to the termination of privatization). As the Federal Government refused to change the legal structure, price cap regulation was spelled out in a public legal contract between Hamburg Airport and the Ministry of Economic Affairs of Hamburg. Both parties agreed to the first five-year price cap period from January 2000 to December 2004 for landing fees, passenger handling fees, noise level charges and aircraft parking fees. Upon the extension agreement, the second five-year price cap period commenced in January 2005. A third agreement was signed in January 2010, similar in form to the previous ones.

Hamburg Airport's price cap is characterized by a sliding scale CPI-X (consumer price index CPI minus a specific value X), which is set on a revenue yield basis and in consistency with a dual till approach. The X value was fixed at 2 for the five-year period, but if in any year growth in passenger numbers at the airport exceeds a threshold number (3 per cent a year), then the X would be increased the following year. There is no provision for X to fall if passenger throughput falls short of forecast levels. The objective of the sliding scale is to reduce the possibility of the airport achieving 'windfall profits'. In May 2002, however, the sliding scale was suspended because of the asymmetry issue that a temporary decrease of demand followed by higher growth would, on average, lead to a relatively high X. In addition to a price cap, the airport must attain the quality of service targets, including availability of aircraft parking positions and availability and punctuality of passenger and baggage transport systems.

At Fraport, following an agreement with the airlines in April 2002, a new regulatory regime was introduced by a public legal contract between Fraport and the Ministry of Economic Affairs and Transport of Hesse. The core of the contract is a revenue sharing agreement, under which the average charge per passenger is coupled to the development in passenger volume (actual and budget) until December 2006. If passenger volume grows faster than planned, one-third of the resulting higher revenue is to be returned to the airlines. On the other hand, should passenger figures fail to reach budgeted levels, Fraport can compensate for such shortfalls by higher charges, applying the same ratio. The economic risks and opportunities could thus be shared by both the airport and the airlines. In January 2007, a new but similar regulatory regime for airport charges came into force between Fraport and the Ministry of Economics, Transport, Traffic and Development of Hesse. New agreements were subsequently approved in 2010 and 2013.

In December 2004, Düsseldorf Airport reached agreement on the commercial terms of a four-year pricing path with the Ministry of Transport and the airlines. In the range of an annual passenger volume between 14.3 and 17 million, a constant Reference Quotient (RQ) is determined per passenger. The RQ is the maximum allowable revenue yield (average charge of all approval-required airport charges) per passenger. In case of an increase of more than 17 million passengers, the RQ drops and therefore do the charges. If the number of passengers decline under 14.3 million, the RQ will be raised accordingly. The new agreement was in effect retroactively in June 2004 and has a duration of four years. This agreement was subsequently renewed in 2008.

## **Economic oversight: ANSP**

The Ministry of Transport, Building and Housing reviews and approves any changes in air navigation services charges of DFS, but it does not independently evaluate DFS's price-setting process or pricing changes. In general, DFS continues to be regulated under the Regulation of 14 April 1984 and the Regulation of 28 September 1989. Based on the former regulation, these charges are collected as route charges by the Eurocontrol agency both for domestic as well as international air traffic. Nationally and based on the latter regulation, DFS levies terminal charges for arrivals and departures.

In April 2006, the Parliament for the first time adopted an Air Navigation Services Act, stipulating the privatization of DFS, which subsequently became a company organised under private law and 100 per cent owned by the Federal Republic of Germany. The Federal Supervisory Authority for Air Navigation Services (BAF, Bundesaufsichtsamt für Flugsicherung) was established under the new act to meet the Single European Sky requirement, i.e. separation of regulatory and operational functions. BAF has supervised air navigation services providers including DFS and regulated their charges since 2009. Area control and aerodrome control at the international airports will continue to be handled for a transitional period (20 years/16 years) exclusively by DFS, while competition is possible at regional airports.

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