



CONFERENCE ON THE ECONOMICS OF AIRPORTS AND AIR NAVIGATION SERVICES

Montréal, 15 to 20 September 2008

Agenda Item 1: Issues involving interaction between States, providers and users

Agenda Item 1.3: Consultation with users

STRENGTHENING PRACTICES FOR CONSULTATION WITH USERS

(Presented by the International Council of Aircraft Owner and Pilot Associations (IAOPA))

SUMMARY

This paper seeks to strengthen the relationship between users and airport/air navigation service providers. Existing guidance regarding user/provider consultation does not adequately emphasize the importance and necessity of this function. More importantly, there is little provision for an appeal mechanism in cases where agreement is not possible following consultation.

Action by the Conference is in paragraph 5.

1. INTRODUCTION

1.1 ICAO guidance has long recommended that a consultation process be available between users and aerodrome and air navigation services providers. *ICAO's Policies on Charges for Airports and Air Navigation Services* (Doc 9082) has set forth the basic principles for establishing consultation processes yet this mechanism is either not employed by a number of providers or not used on a regular basis. A permanent consultation process is considered to be essential, one in which user and provider meet at regular intervals to discuss system requirements, service levels and charges.

1.2 The Secretariat's WP/6 provides a number of good reasons for States to encourage users and providers to consult on a variety of issues facing them. Although we agree with many of the points made in that paper we feel that the measures called for do not provide adequate guidance regarding user/provider consultation.

2. DISCUSSION

2.1 While some may think that the reasons for emphasizing ongoing and comprehensive consultations regarding airports and air navigation services are merely a concession to the user, there is mutual benefit to be derived by all parties involved in the process. Among these benefits are:

- a) An exchange of views regarding the status of the services provided.
- b) Feedback concerning the level and appropriateness of services offered.
- c) Interaction about future plans and requirements of all parties.

2.2 Without regular and substantive exchanges, both parties are deprived of essential information important to all concerned regarding the success, efficiency and safety of the services provided and received. Misunderstandings arising from lack of knowledge about the others' plans, problems and pressures will likely create even greater difficulties within the air transportation system. It is only through *regular and substantive* communications among parties that a successful *joint venture* is possible. Relationships developed over time among consulting parties often prove very useful in resolving issues on an informal level before they become official positions requiring formal action.

2.2.1 It is not enough to publish notices of proposed changes to levels of services or charges and wait for written replies from those affected when dealing with large and complex proposals that involve a number of parties and have significant safety and financial implications. Rather, regularly scheduled meetings of all parties involved will keep everyone informed regarding the issues involved and provide an opportunity for comment and discussion.

2.3 Lead times for notices of proposed provider changes and resulting decisions have been set at four and one month, respectively. It is unrealistic to expect users to adequately absorb, analyze, question and calculate the impact of proposed changes that often involve complex situations and detailed financial and operational data. For major changes, it is likely that the provider has taken considerably longer than four months to generate the proposal; why, then, would they expect the user to be able to respond in any less time?

2.3.1 Similarly, once the decision has been made by the provider to take a specific action regarding services or charges, the current lead time of one month is inadequate for users to adjust their operations to accommodate the new procedure or fee. While some minor changes may be processed within a month's time, most changes will require considerably more time to resolve. Altered fees may cause extensive scheduling and routing revisions for commercial air transport or the need to search for alternatives for private operators, neither of which can be accomplished within one month.

2.4 Since airports and air navigation service providers either have no or limited competition, the ability of the user to effectively negotiate service levels or charges with the provider is often limited. While the State has an obligation under ICAO's guidelines to ensure that providers do not abuse their dominant position, ensuring this safeguard is often difficult. Therefore, previous editions of Doc 9082 have encouraged the use of a "first resort" or mediation/arbitration mechanism to facilitate potential dispute resolution among interested parties. While this is often a desirable method, it is seldom used on a regular basis to promote issue resolution and avoid conflict. Such a process, if employed regularly, would save the time required to achieve consensus among the parties while relieving the State of post-negotiation remedial measures to ameliorate disagreements.

2.5 Of even greater importance is the absence of an appeal process to ensure that either provider or user is afforded the opportunity to seek redress within an official administrative or legal framework when consultation and arbitration/mediation measures fail the parties. This is especially important when either a dominant user or monopoly provider is involved in the negotiations. It would be difficult for the transportation directorate of the State to provide this service but a legal or administrative process could be instituted in other, unrelated, branches of the government.

2.6 As noted in WP/6, since current Doc 9082 guidelines regarding consultation with users for both airport and air navigation services issues are similar, the two sections should be consolidated into a single section.

3. CONCLUSIONS

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

- a) Regular and substantive consultations between users and airport and air navigation service providers are highly desirable but not always employed or used to good advantage. These consultations are used to ensure adequate information flows, airing of views on issues of mutual interest and consideration for the effects of changes on all parties.
- b) Lead times for proposed changes to systems, service levels or charges are currently inadequate to ensure a thorough evaluation of the proposals or resulting directives.
- c) Facilitation of, and appeal processes for, user/provider interactions are quite important but are often inadequate or non-existent.

4. PROPOSED AMENDMENTS OF POLICIES

4.1 As proposed in WP/6, and amended as shown below, the following will replace paragraphs 31-33 and 49-51 of Doc 9082; the replacements should be placed immediately after the existing paragraph 17.

Consultation with users

Charges

xx. *The Council emphasizes the importance of consultation with airport and air navigation services users before changes in charging systems or levels of charges are introduced. The purpose of consultation is to ensure that the provider gives adequate information to users relating to the proposed changes and gives proper consideration to the views of users and the effect the charges will have on them. The aim should be that, wherever possible, providers and users reach an agreement. Failing such agreement, ~~the provider would continue to be free to impose the charges concerned, subject to users having~~ users would have the right of appeal to a body independent of the provider and State oversight body, ~~where available, but the~~ The appeal process should be consistent with the form of economic oversight adopted in the State concerned. ~~If there is not an appeal mechanism in place it is even more important that providers and users make every effort to reach an agreement on any changes in charging systems or levels of charges before they are introduced.~~*

Airport and air navigation services planning

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Permanent, regular consultation mechanism

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i) *When a revision of charges or the imposition of new charges is contemplated by an airport operator, a provider of air navigation services provider or other competent entity, appropriate notice should normally be given to users or their representative bodies at least ~~four~~ six months in advance, ~~in accordance with the rules and regulations applicable in each State.~~*

ii ...

iii) *Reasonable advance notice, of at least ~~one~~ three months, of the final decision on any revision of charges or imposition of new charges should be given to the users. ~~This one month period does not need to be in addition to the four months prescribed in i) above.~~*

iv) ...

First resort mechanism

xy *The Council considers, with regard to charges in particular, that with the rapid growth in the number of airports and providers of air navigation services that are independent from direct government control, there may, in the interest of the airports, the providers of air navigation services and their users, be a need for a neutral party at the local level to preempt and resolve disputes before they enter the international arena (a first resort mechanism). The mechanism should be flexible, and its focus should be on conciliation or mediation but could range to full arbitration if the State and parties concerned so decides. Such a function might be included in the terms of reference of an independent body with the much broader responsibilities of overseeing the operations of the autonomous service providers, referred to in paragraph 15, or it separately established*

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 to Doc 9082, shown in paragraph 4.1.

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