



**WORKING PAPER**

**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**

**CONSULTATION WITH USERS**

(Presented by Airports Council International (ACI))

**SUMMARY**

Consultations with users are an important element in the development of airport user charges and airport infrastructure planning. Airports have a variety of users including aircraft operators, passengers and shippers, and possibly other end users. In the context of *ICAO's Policies on Charges for Airports and Air Navigation Services* (Doc 9082), consultations should be defined more specifically as consultations with aircraft operators. The parties involved have a responsibility to engage actively and constructively in the consultation process and should primarily take into account the current and future interests of passengers and other end users. However, consultations by definition are different from negotiations and do not require an agreement between the parties. The airport provider shall retain its autonomy and freedom to set charges after considering the information obtained from users during the consultation process. It is essential that any appeal process be consistent with the form of economic oversight adopted in the State concerned.

Action by the Conference is in paragraph 5.

**1. INTRODUCTION**

1.1 Good relations between providers and users are important for the sound development of air transport. Current ICAO policy and guidance material (Doc 9082) stresses the need to consult prior to a revision of charges or the imposition of new charges, and before the finalization of development plans and capital projects.

<sup>1</sup> Language versions are provided by ACI.

1.2. Airports Council International ACI has advocated user consultations as a dynamic and effective tool to develop airport user charges and to optimize airport development to avoid intervention of third parties i.e. governments or regulators.

## 2. DISCUSSION

2.1 Without effective communication between service providers and their stakeholders, there is a risk that necessary infrastructure enhancements and capacity expansions will not be provided in a timely manner, leading to costly congestion for users and limited competition at and between airports to the detriment of the consumer and welfare.

2.2 Consultations are designed to increase the mutual understanding between providers and users, give them an awareness and knowledge of each others' plans and intentions, and should result in all parties moving in the same direction to ensure necessary investment and funding.

2.3 Consultations by definition are different from negotiations in that they do not require an agreement between the two parties, nor do they give users a right to veto. An airport has to consider a variety of interests that do not always match the interests of aircraft operators. Commercial and competitive strategies of aircraft operators and airports may diverge, for instance if additional airport capacity means lowering the barriers to entry for new air carriers. It is therefore essential that the provider retain its autonomy and freedom to set charges and to plan future investment while duly considering the input and outcome from consultations.

2.4 Specific procedures for consultations regarding their content and frequency should be determined on a national or local basis, taking into account the size and scale of the service provider's activities and plans as well as the number of users and stakeholders involved. Permanent consultations bear the risk of the provider losing its autonomy as well as an excessive disclosure of commercially sensitive information. The basis of any consultation needs to be a specific proposal. Permanent consultations may result in an opportunity to instruct the provider on managing its day-to-day business and would unreasonably burden and distract airport management.

2.5 User feedback and information obtained during consultations should be considered, as far as possible, before the provider reaches its decision. However, although the aim of the parties should be to reach consensus, it must be acknowledged that consensus may not be achievable in every situation or on every proposal. To facilitate consultations, aircraft operators need to recognize the planning cycles of airports and provide information that takes into account the airport's planning horizon covering up to 10 years or more. The information provided by aircraft operators should relate to future types, characteristics and numbers of aircraft, the anticipated growth of passengers and cargo to be handled and the specific facilities users wish to use.

2.6 Airports recognize the complexity of foreseeing airline plans and strategies particularly in regard to individual airports, however, an airport needs to view the bigger picture which includes the needs of passengers, the development and objectives of the community it serves as well as the national economy, and not least its own future strategy and positioning in the industry. Individual airline strategy and planning is a significant factor for future airport development, but it is only part of the picture that airports need to look at.

2.7 Setting a timeline for giving notice of the final decision by the provider is seen as overly and unnecessarily prescriptive. The purpose of ICAO policies is to establish guidelines for Contracting

States. Against this background, quantifying notice periods seems inappropriate and should remain at the discretion of the States.

2.8 In the event that consultation does not lead to consensus between the parties, the provider needs to continue to be free to implement its decision. Any right of appeal of aircraft operators should be consistent with the form of economic oversight adopted in the State. In a functioning market this commercial freedom should not be compromised by an appeal process potentially interfering with the provider's decision. Only in the event that the market fails to remedy the risk of abuse of a dominant position by the provider, the decision of the provider should be subject to a review by an appeal body.

### 3. CONCLUSIONS

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

- a) States should encourage the establishment of regular consultation processes between users and providers of airport infrastructure where cooperative arrangements are not already in place. The consultation procedures should be flexible and based on specific proposals by the provider.
- b) ICAO should emphasize that consultations should primarily take into account the current and future needs of passengers and other end users.
- c) ICAO should amend paragraphs 31-33 of Doc 9082 to specify the characteristics and purpose of the consultation process. The decision to consolidate paragraphs 31-33 and 49-51 into one new paragraph and make it part of the introduction of Doc 9082 shall be left to the conference.

### 4. PROPOSED AMENDMENTS OF POLICIES

4.1 In accordance with conclusion c) of paragraph 3.1, it is proposed to amend paragraphs 31-33 of Doc 9082 as follows:

#### *Consultation with users*

#### *Charges*

*31. The Council emphasizes the importance of consultation with ~~airport users~~ aircraft operators before changes in charging systems or levels of charges are introduced. Such consultations should primarily take into account the current and future needs of passengers and other end users. The purpose of consultation is to ensure that the provider gives sufficient information to users relating to the proposed change 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, changes are made in agreement between users and providers. Failing such agreement, airports would continue to be free to impose the charges concerned subject to users having the right of appeal to a body independent of the airport, where available, but the appeals process used should be consistent with the ~~regulatory regime~~ form of economic oversight adopted in the State concerned (see also paragraph 33). It is not possible to lay down a specific procedure for consultations of this*

*kind owing to the diversity in the administrative, financial and legal frameworks within which airports function; the procedures at individual airports will also need to take account of the size and scale of the airport's activities. However, subject to these considerations, the Council recommends that:*

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

*ii) In any such revision of charges or imposition of new charges, the users should be given the opportunity to submit their views and consult with the airport operator or competent entity. For this purpose the users should be provided with transparent and adequate financial, operational and other information to allow them to make informed comments.*

*iii) Reasonable advance notice of the final decision on any revision of charges or imposition of new charges should be given to the users.*

*iv) Consultations should take place on specific proposals, make clear the parties most likely to be affected, the specific questions on which feedback is requested, the time schedule for responses, and for significant projects, the business cases for proposals and the financial analyses that have been conducted. All affected parties should be given the opportunity to present their views.*

### **Airport planning**

*32. The Council also considers it important in light of the very high and ever-increasing cost of new airports and major developments at existing airports that users or their representative organizations be consulted before the finalization of plans for projects. The purpose of such consultation is to ensure that, wherever possible, the developments concerned meet the needs of users and that users are aware of the financial implications in terms of the charges that would be paid by them. Equally, in order that airport entities may better plan their future financial requirements, airport users, particularly air carriers, should for their part provide advance planning data to individual airport entities on a 5- to 10-year forecast basis relating to future types, characteristics and numbers of aircraft expected to be used, the anticipated growth of passengers and cargo to be handled, the special facilities which the airport users desire, and other relevant matters. Such planning could best be accomplished by two-way discussions between airports and air carriers, either directly or through their respective representative organizations.*

### **“First resort” mechanism**

*33. The Council considers, with regard to charges in particular, that with the rapid growth in the number of airports that are independent from direct government control, there may, in the interest of the airports 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). Consistent with the form of economic oversight adopted in the State concerned, ~~t~~The mechanism should be flexible, and its focus should be on*

*conciliation or mediation but could range to full arbitration if the State concerned so decides. Such a mechanism 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 might be 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 of Doc 9082 in paragraph 4.1.

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