



**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**

**1.1: Economic oversight**

**ECONOMIC OVERSIGHT AND REGULATION**

(Presented by the United States)

**SUMMARY**

This paper discusses the importance of ensuring that economic oversight mechanisms be proportionate to the specific circumstances. An amendment to language proposed by WP/4 is proposed.

Action by the Conference is in paragraph 4.

**1. INTRODUCTION**

1.1 Recent surveys conducted by the ICAO Secretariat suggest that since the last ICAO “Conference on the Economics of Airports and Air Navigation Service Providers” in June 2000, there is a growing trend toward service providers adopting more commercialized or privatized business practices. While only a small handful of air navigation service providers (ANSPs) have become fully privatized, many more ANSPs have adopted more commercialized style business practices. Similar trends have taken place within the international airport community. However, in percentage terms, many more international airports have adopted a privatized operating structure.

**2. DISCUSSION**

2.1 Given the trend toward more commercialized or privatized operating structures, many within the international aviation community have questioned the State’s ability to ensure these more autonomous service providers operate in a manner consistent with their State’s international obligations. To address this concern, the ICAO Secretariat has suggested greater attention be given to the role of economic oversight and regulation as mechanisms to ensure compliance with a State’s international

obligations. In CEANS-WP/4, the Secretariat has identified a number of different forms of economic oversight and regulation. These include the following forms of oversight and regulation:

- a) a State's competition law;
- b) fallback regulations;
- c) institutional arrangements such as requirements on consultation with users;
- d) third-party advisory commissions;
- e) contract regulations;
- f) incentive-based or price-cap regulations; and
- g) cost-of-service or rate-of-return regulations.

2.2 Each of these mechanisms, when properly employed, can aid States in guarding against monopoly abuses by their service providers. However, as noted during the panel discussion titled "Economic Oversight of Airports and Air Navigation service providers at the CEANS' Pre-Conference Symposium, the application of these mechanisms should be measured, but effective, ensuring that States have the necessary means to ensure that all service providers operate in a manner consistent with the State's international obligations.

### 3. CONCLUSIONS

3.1 To this end, the proposed changes offered in CEANS-WP/4 provides needed guidance in light of the trend toward more commercialized and privatized provision of service. However, as the proposed changes are drafted, they are a bit too prescriptive and do not emphasize the need that regulatory interventions should be measured and applied in a manner proportionate with the situation at hand.

3.2 This paper proposes the following amendments to those proposed in CEANS-WP/4:

#### *Economic oversight*

*xx. The Council recommends that with the continued trend towards commercialization and privatization in the provision and operation of airports and air navigation services, economic oversight in general, and economic regulation in particular, should recognize the economic benefits of commercialization and privatization as it seeks to achieve certain public policy objectives such as: ~~seek to achieve a balance between the efforts of the autonomous or private entities to obtain the optimal effects of commercialization or privatization and those public policy objectives that include, but are not limited to, the following:~~*

- i) Prevent airports and providers of air navigation services from anticompetitive practices or from abusing their dominant position;*
- ii) Ensure non-discrimination and transparency in the application of charges;*
- iii) Provide incentives for airports and providers of air navigation services, as*

*well as users, to reach agreements on charges and service levels;*

- iv) Ensure that appropriate performance management systems are developed and implemented by airports and providers of air navigation services; and*
- v) Ensure investments in capacity to meet future demand.*

yy. The Council also recommends that States should keep economic regulatory interventions proportionate to the circumstance, ~~at a minimum and as required~~. When ~~deciding whether~~ implementing economic oversight ~~beyond competition law~~ is necessary, the degree of competition, the costs and benefits related to the alternative oversight forms of regulation/oversight, as well as the legal, institutional and governance frameworks should be taken into consideration. It is in the interest of all interested parties that economic oversight ~~is set up in a~~ be transparent, efficient and cost-effective manner.

#### 4. **ACTION BY THE CONFERENCE**

4.1 The Conference is invited to:

- a) Note the important role economic oversight has in addressing anti-competitive practices that may arise from the dominant position of a privatized or significantly commercialized service provider;
- b) Adopt the proposed revision as noted in paragraph 3.2 above.

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