



# Bulletin FOR MEMBERS

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## ICAO issues new policy on airport charges: urges national governments on implementation

Dear Members,

In July 2008, ACI Director General Angela Gittens wrote to all members concerning the ICAO Conference on the Economics of Airport and Air Navigation Services ([click here](#)) and the important debate to take place there concerning airport economics and user charges. The monthly ACI World Reports kept you apprised of the ACI efforts, formal papers submitted to the conference and initial results. This Bulletin, as promised previously, provides a summary of key conference results and recommendations and their impact on ICAO's new policies on charges for airports as reflected in the revised ICAO Doc 9082.

For more information regarding ICAO policy on charges for airports or any questions, please do not hesitate to contact me.

Best regards,

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### Introduction

The International Civil Aviation Organization (ICAO) has released the 8th edition of Doc 9082 - ICAO's Policies on Charges for Airports and Air Navigation Services. The new edition incorporates the results of the Conference on the Economics of Airport and Air Navigation Services (CEANS) which took place in Montreal in September 2008. ACI was represented by a large delegation and several airport representatives joined their Member State delegations. ACI submitted five Working Papers to the conference.

The key elements of the conference and policy revision were Economic Oversight, Economic Performance and Minimum Reporting Requirements, and User Consultation. In addition to the review of these substantive points, CEANS identified a lack of consistent compliance with ICAO policies on user charges by Member States as a critical issue that needs to be tackled. The conference therefore adopted a recommendation that States should be encouraged to adopt the four principles of the established policy (non-discrimination, cost-relatedness, transparency and consultation with users) into national legislation or regulation, and/or to include them in air service agreements. Doc 9082 as such is not binding for Member States, however, it draws its legitimacy from the binding principle of non-discrimination codified in Article 15 of the Chicago Convention.

It is important to note that Doc 9082 has no immediate significance for individual airport operators. To become effective and binding, the policy would require sanctioning and implementation nationally by each government. That being said, the policy principles in Doc 9082 represent valid guidelines and references for airport charging methods as promoted by ACI and are being widely complied with by the airport industry.

**Download 8<sup>th</sup> edition of ICAO Doc 9082 [http://www.icao.int/icaonet/dcs/9082/9082\\_8ed\\_en.pdf](http://www.icao.int/icaonet/dcs/9082/9082_8ed_en.pdf)**

## The New Policy

The policy on charges for airports in Doc 9082 was amended in regard to the definition, objectives and application of economic oversight. ICAO recommends that States should select the appropriate form of economic oversight according to the specific circumstances, while keeping regulatory interventions at a minimum and only as required. When deciding on appropriate forms of economic oversight, State considerations should include the degree of competition, the costs and benefits related to alternative forms of economic oversight, as well as the legal, institutional and governance frameworks.

The objectives of **Economic Oversight** include:

- Minimise the risk of airports engaging in anti-competitive practices or abusing their dominant position
- Ensure non-discrimination and transparency in the application of charges
- Ascertain that investments in capacity meet current and future demand, and
- Protect the interests of passengers and other end users (new objective, clarifying the purpose of economic oversight)

To promote these objectives, ICAO calls on States to ensure that airports consult with users and that appropriate performance management systems are in place.

It should also be noted that the new edition of Doc 9082 no longer refers to the 'monopolistic nature of airports'. It now refers to the 'potential abuse of a dominant position by an airport'. The new wording implies that economic regulation should be the exception, not the rule. The new policy also emphasises that capacity must meet current and future demand, and that the purpose of the policy is not the protection of airlines, but of end users (i.e. passengers and shippers).

The area of **Economic Performance and Minimum Reporting Requirements** addresses one of the most significant and detailed changes to the policy recommending that States ensure that providers develop and implement appropriate performance management systems that include:

- Definition of performance objectives with the purpose to continuously improve performance in four Key Performance Areas (KPAs), i.e. safety, quality of service, productivity and cost-effectiveness. States may choose additional KPAs according to their specific circumstances.
- Selection and reporting of at least one relevant performance indicator and its target for each of the KPAs selected.
- Consultation with users to achieve a mutual understanding and consensus, where appropriate, on performance objectives and plans to achieve those.

ACI through its World Economics Standing and Regional Economic Committees will work with ICAO and Member States to develop appropriate KPAs and Indicators that airports may apply and report if required by their government.

The chapter on **Consultation with Users** has been entirely restructured and partly rewritten. Much attention is given to the Consultation Process with the addition of its own paragraph detailing when and how consultation should be carried out in case there are no provider/users cooperative arrangements in place that are acceptable to all parties concerned. ICAO encourages States to ensure that a clearly defined, regular consultation process is established with users by providers. Specific procedures for effective consultation should be determined on a case-by-case basis taking into account the form of economic oversight adopted by the State. The procedures at individual airports and airspace should also take into account the size and scale of the airport's activities. Further key recommendations are:

- To hold consultations on both charges and infrastructure development and investments
- Provider and users to give adequate information
- Aim to reach agreement wherever possible, but failing such agreement, the provider remains free to impose its decision
- To ensure protection of market sensitive data
- To show appropriate rationale for decisions taken
- First resort mechanism: possible need for neutral party to pre-empt and resolve disputes at national level

Other relevant changes/ specifications to the policy were adopted with regard to:

- Governance, ownership and control: clear separation of regulatory and operational functions
- Aggregation of cost bases: more flexibility and simplification in setting airport charges by raising the level of cost-relatedness of charges
- Differential charges: permitted if transparent, costs not allocated to other non-benefiting users and on a temporary basis

### **Next steps**

- Revision/ expansion of ICAO guidance material (i.e. ICAO Airport Economics Manual, Doc 9562) in cooperation with industry (i.e. ACI) through ICAO Airport Economics Panel in which ACI participates
- Promotion of policies by ICAO

- Regional ICAO workshops with participation of ACI (Vienna, 2-4 December 2008; next workshop from 23-25 February 2009 in Bangkok)
- Joint ICAO/ACI user charges training for airports (next course planned for May '09)

## **Appraisal**

ACI is widely satisfied with the outcome of the conference especially when considering the significant efforts of the airline industry to equate airports with monopolies, denying any competition between airports, and to introduce blanket regulation of airport charges. The conference results also need to be seen against the background of the new policy still applying for airports and ANSPs alike. In this respect the outcome represents more than a compromise in favour of the airport industry.

The conference has basically acknowledged the commercial and competitive environment airports are operating in and has therefore given priority to the application of national legal and institutional frameworks (i.e. competition law) to remedy the risk of abuse of a dominant position. The definition of passenger and other end user interests as a key objective of public policy (i.e. economic oversight) is another vital conference outcome as it clarifies that oversight measures and regulatory interventions must not be designed to protect airlines.

Despite the clear differentiation between economic oversight and regulation, ICAO does however recommend that States ensure that airports develop and implement appropriate performance management systems regardless of their market position and risk of abuse of a dominant position. ACI would have preferred a less prescriptive language and a clearer differentiation between airports and air navigation service suppliers (ANSP) on this issue as the performance management parameters in the new policy were simply adopted from existing guidelines for ANSPs which by definition are monopolies. It is therefore important for ACI to stay involved in the process of defining key performance areas, indicators and objectives in the framework of the revision of the ICAO Airport Economics Manual (Doc 9562) to avoid undue State intervention or interference with airport autonomy.

## **Recommendation to ACI members**

As explained above, there are no immediate consequences for airport operators until a national government decides to adopt and implement the new ICAO policy. It is therefore recommended to determine the position of the national government in regard to implementation of policy in Doc 9082. ACI also encourages its members to analyse for themselves whether their existing user charges structure meets ICAO recommendations in terms of non-discrimination, cost-relatedness, transparency and consultation with users as a matter of due diligence.

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