



Fitness check of EU airport legislation

Call for Evidence

Preamble

The International Air Transport Association (IATA) is the trade association for the world's airlines, representing more than 320 airlines and 83% of global air traffic. IATA's member airlines include many – based both within and outside of the EU - that operate flights to/from or within Europe. We welcome the opportunity to comment on the fitness check of EU airport legislation carried out by the European Commission.

The liberalization of the internal aviation market stands as one of the greatest achievements of the EU, catalyzing unparalleled freedom of movement of people, goods, and services. This liberalization has been essential in fostering sectoral growth, bolstering competitiveness, and eliminating barriers, consequently propelling heightened connectivity throughout the EU. Concurrently, the US witnessed a similar liberalization, leading to the emergence of new business models and an unprecedented surge in industry competition and competitiveness.

The legislative framework considered by this Call for Evidence has been instrumental in fostering a competitive aviation environment. IATA appreciates the general approach to tackling this Call for Evidence although there are not so many interfaces between the three pieces of legislation. Airport charges and ground handling are often subject to local monopoly situations and commercial exploitation by airports, while Slots are meant to ensure proper management of such capacity, a result of often not possible or allowed the expansion of airport capacity. The granting and allocation of slots is detrimental to any airline operation. There are, in fact, other interdependencies with other pieces of regulation such as RefuelEU, TEN-T, Balanced Approach regulation, and demands by governments to restrict capacity and limit operating times that we encourage the address.

As we describe in more detail below, a relevant number of airports, inherently monopolistic entities, already control their own core aviation infrastructure and other critical aspects of the aviation environment, such as essential ground handling facilities. They are continuously striving to extend these monopolies even further. Slot allocation and ground handling services provide additional opportunities for airports to control access to their infrastructure if not properly regulated. At the same time, airports oppose any regulatory review of their charging mechanisms, insisting that the Airport Charges Directive is "good enough" to prevent them from abusing their monopolistic position. Left unchecked, airport monopolies will limit competition and innovation in the sector.

In its response to the Call for Evidence, IATA calls for three key approaches:

- A review of only the full package of legislation, under a holistic approach. IATA believes that the Fitness Check will fail to achieve its expected objectives unless all three of the pieces of legislation are included in the process.
- Transformation of the Airport Charges Directive and the Ground Handling Directive into EU Regulations with the objective to effectively address performance regulation of monopolies.
- Alignment of the Slot Regulation with the recently updated global industry standard on slot allocation, the WASG, avoiding harm to EU aviation through misalignment with global slot rules. Further, the Commission should ensure that the Slot Regulation adequately addresses the obligations of all stakeholders – airports, coordinators, and airlines.



Observations and areas of improvements

Access to competitively priced, sustainable, and quality infrastructure is vital to a well-functioning aviation market that can offer affordable connectivity to consumers. The absence of harmonization between states and the lack of adherence to global standards impedes the EU's ability to retain its share of the global economy. In 1993, the EU and US economic areas were of comparable size. However, while GDP per capita in the US increased by almost 60% from 1993 to 2022, Europe's increase was less than 30%. Similarly, the EU Single Market is being or has been passed by Asian markets.

Today, the EU operates in a radically transformed global environment, where facilitating greater participation of small and medium-sized enterprises in the Single Market could significantly enhance the EU's effectiveness. For this, airline connectivity is critical. Inflation costs fall disproportionately on families and businesses that already face economic hardship. In addition, the costs to meet the EU's ambitious green targets cannot be overstated. Lastly, any reform should address the complex international framework, uphold the rule-based international order, and avoid putting the EU's credibility and international role at stake.

In this regard, IATA firmly supports the Commission's efforts for a revised regulatory framework but must request due consideration of the recommendations provided in this document following the main objectives of the Fitness Check as identified in this Call for Evidence.

Efficient use and pricing of airport capacity and ground handling services, delivering connectivity in line with consumer preferences and needs of airport users

Access to competitively priced, sustainable, and quality capacity is vital to a well-functioning aviation market that can offer affordable connectivity to consumers.

Efficient use of airport capacity

In an ideal world, there would be no need for slots, as there would be sufficient airport infrastructure to meet customer demand, allowing passengers and cargo to fly where and when best suited their needs and schedules. Unfortunately, airport infrastructure continues to be insufficient to meet customer demand in many locations. This is exacerbated by insufficient capacity, i.e., insufficient capacity on the ground and in the air have a collective impact on the overall capacity of the system. While the airlines will continue to call for infrastructure improvements, it is also understood that a lack of infrastructure is an unwelcome but expected part of the business which will not be remedied in full in the foreseeable future.

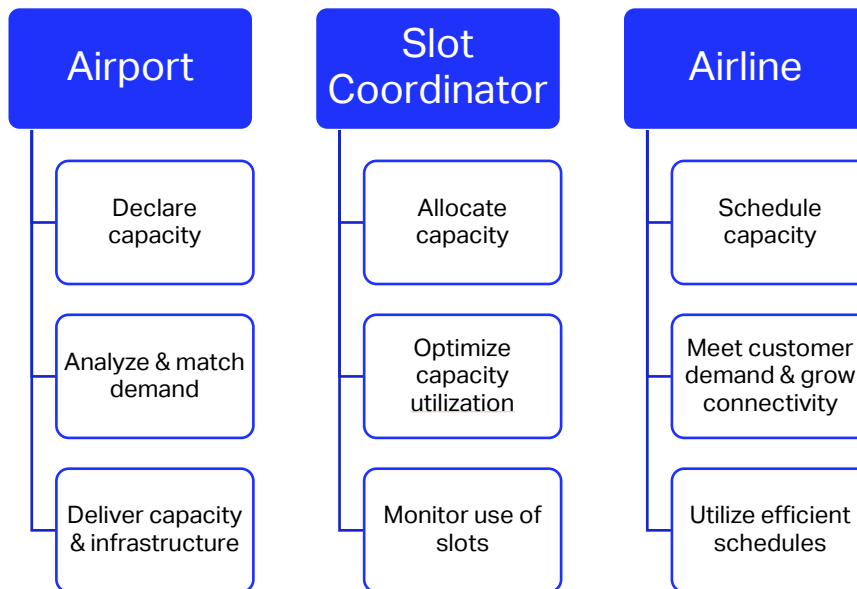
Therefore, it is critical that the industry maximizes the capacity that is available, and a strong global slot policy is a vital tool in reaching that goal. IATA believes both that WASG-based regulations such as the Slot Regulation (SR) are the best existing system for slot allocation and enjoy almost universal recognition – and that these regulations can and should be further improved to ensure that all stakeholders are playing their part in maximizing existing capacity.

Since 2009, the Worldwide Airport Slot Board and its predecessors have continued to evolve the WASG, publishing 23 different editions since the last (permanent) update to the SR. The SR has not been amended to reflect these changes, however. It is a vital first step, prior to considering any additional changes to the regulation, that the EU first align with the modern version of the WASG to avoid falling further behind the global standard to the detriment of the travelling public, cargo customers, and the aviation industry as a whole.

IATA strongly encourages the Commission to take forward the changes to the WASG to align the SR with current industry best practice and dynamically align with future updates. This could be done by strengthening and clarifying the interplay between the regulation and the WASG, including explicit statutory language to allow future WASG changes to be implemented in the EU in a faster and more agile manner.

In addition to alignment with the existing WASG, the Commission should also consider other areas of improvement of the existing regime to improve the focus of the SR on the obligations of airports and coordinators and to enhance flexibility in the process for airlines' schedules to adapt to consumer preferences.

There are three parties integral to the slot allocation process – airports, coordinators, and airlines – each with representation on the Slot Board. In order to maximize and make best use of existing infrastructure, the efforts of all three stakeholders are necessary, as summarized below:



Today's SR focuses heavily on the obligations of and requirements for airlines operating to constrained airports. The regulation does not, however, adequately address the necessary obligations of airports and coordinators to the process. As demand continues to grow without corresponding infrastructure improvements, it is increasingly important to use existing capacity efficiently and effectively. An update to the SR offers the opportunity to ensure that the airports and coordinators contribute to a sustainable way forward.

Delivering connectivity in line with consumer preferences requires airlines' schedules to have the necessary **flexibility** to rapidly adapt to consumer preferences. Meeting consumer demand should be the heart of the slot management process and is not solely incumbent upon the airlines to achieve. A revised regulation could facilitate stronger cooperation between airports, coordinators, and airlines to support consumer needs. It could also ensure the resiliency of the system by providing airlines enough flexibility to operate **sustainably** and effectively, when their schedules are inevitably disrupted by external factors beyond their control.

The role of airports in the slot process is clearly defined as the capacity providers (of slots). That role is limited to the theoretical declaration phase, however. It does not take the crucial next step of extending those obligations to the operational phase when the capacity actually must be delivered.

As we look for ways to maximize existing capacity to best meet customer demand, it is vital that the SR provides greater detail on – and obligations regarding – the airports' role in capacity declaration and



delivery of that declared capacity. Critically, the regulation should prescribe safeguards to ensure that airports declare the maximum capacity feasible to ensure the most efficient use of existing infrastructure.

We agree with the Commission's statement in the Call for Evidence that "EU airports are increasingly congested, with many airports facing capacity constraints due to staff shortages, environmental considerations, and inefficient air traffic management. Airport capacity is stagnant while traffic is expected to continue to grow."

A dynamic, responsive capacity declaration is therefore fundamental to the slot allocation process. If the process fails to work efficiently at this first step, the rest of the process of allocating and operating the capacity is already destined to be sub-optimal. Airlines invest heavily in updating and changing their schedule one season to the next to maximize route, connections and destinations served in response to consumer demand. Airports must be required to invest similar levels of effort in developing their capacity declarations. Increased efforts by airports to account for changes in aircraft and airline mix, route changes, and subsequent payload variation, made in close collaboration with the coordination committee, will support an optimal declaration for the coordinator to allocate against.

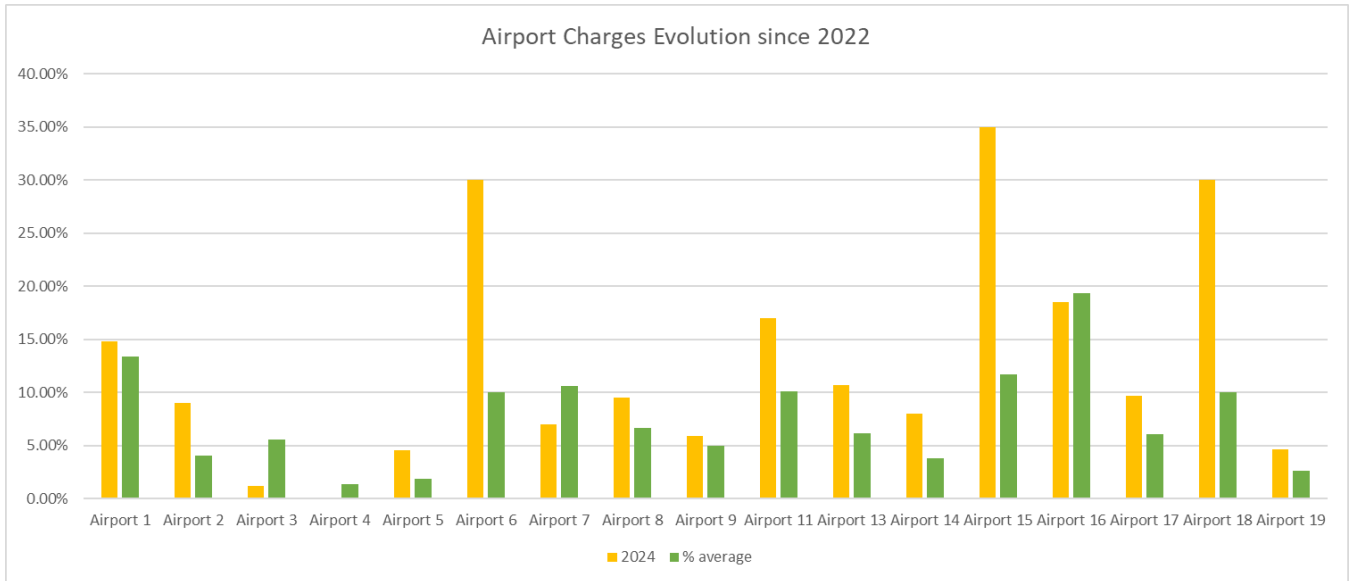
Finally, the WASG contains an entire chapter dedicated to airline slot performance monitoring to ensure identification, management, and correction of any issues. The airlines encourage the Commission to better balance the SR to also address airport performance by incorporating into the regulation the WASG's monitoring provisions: airports should be subject to a review of capacity declarations, periodic monitoring and management of actual performance, defined service levels, and a clear escalation process when delivery falls short. This will ensure that consumers benefit from practices that ensure optimal use of capacity to meet their travel and shipping demands.

Likewise, the accountability of the coordinator should be enhanced to ensure that they are effective and productive, while becoming responsible to the consumer in their decision making. Any policy decision designed to clarify a coordinator's function or provide interpretation or update on implementing policy should be subject to coordination committee oversight, as the local forum for interested parties on slots. The focus should always be to ensure that coordinators are taking decisions compatible with the consumer-centric approach taken by airports and airlines.

Pricing of airport capacity.

Under the Chicago Convention, the Airport Charges Directive (ACD), and various Air Transport Agreements, including the US-EU ATA, charges must be cost-related (vs. profit-orientated). Unfortunately, this principle is more honored in its breach than in its observance at EU airports.

Looking at regulated charges under the ACD, we observed major airport charges increase in Europe after the COVID-19 crisis. As illustrated below, there has been a continuous trend of airport charges increases across Europe.



The evidence collected as part of the ongoing evaluation and as part of the Commission's monitoring of the application of the ACD indicated that the directive has not been fully effective in addressing the risk that airports with significant market power misuse this power. The lack of competition means there are no incentives to operate efficiently both in terms of running costs and through the provision and timing of capital investment. This resulted in such airports behaving inefficiently (charging unduly high prices for their services with high-profit margins, offering unduly low quality or an unduly low range of services, or over- or under-investing with respect to their users' needs).

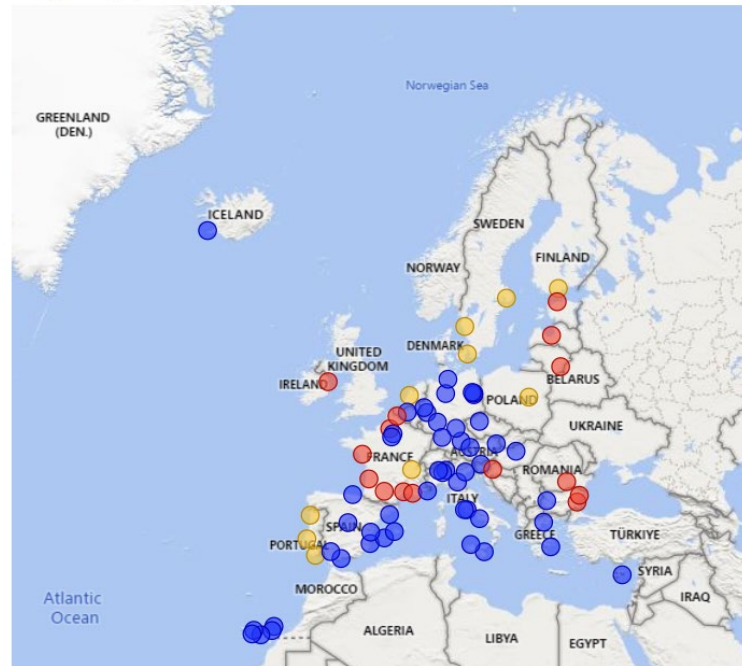
As a result, the symbiotic airport-airline relationship is not balanced, and the benefits the directive was expected to generate have not been realized.

The ACD was introduced to try and harmonize the approach to dealing with market power and set a baseline standard as to how economic regulation was introduced. However, the directive has failed to achieve its objectives as set out by the Commission. Furthermore, looking at the overall market, airport charges globally were approximately 10% above the global cost of air transport when the directive was introduced. In Europe, that figure was closer to 13% and despite the directive's adoption, this figure increased to 15% in 2019. Double-digit increases in airport charges at most major European airports post-COVID mean this figure is likely to increase further, illustrating that the ACD has failed to address the core problem.

An overly lenient ACD has also given rise to inappropriate practices like implementing "dual till" or "hybrid till" systems, where some commercial activities are excluded from the scope of the regulator. In Europe, over 60% of passengers land in or depart from dual till airports that systematically have higher charges than they would if properly regulated.

EU Airports by till

Till ● Dual ● Hybrid ● Single



The dual till model leads to higher charges which are not in the interests of users and passengers – and extracts value from the aviation industry that could be dedicated to efficiency improvements and/or climate investments.

The Support study to the ex-post evaluation of Directive 2009/12/EC on Airport Charges¹ identified that ownership and control arrangements, in conjunction with airport charge control arrangements, influence the capacity to provide cost-related charges. Some of the changes in airport ownership effected by Member States have involved increases in airport charges ahead of the sale, while others have involved changes to the regulatory framework (e.g., transitioning from a single to a dual till) under long-term concession arrangements or other mechanisms unilaterally decided by the Member States.

The effectiveness of the directive has been constrained by the existence of some of these concession laws/contracts. Given Member State involvement and interest in granting those concessions agreements as quickly as possible and with the maximum return possible, it is not surprising that Member States concede provisions enabling a full misalignment with the ACD. Airport concession agreements like the ones in Athens, Budapest, or Portugal are the worst in class. Any concession agreement should be approved by the Independent Supervisory Authorities (ISAs) and overseen by the Commission to ensure alignment with the ACD.

Regarding airport networks, national networks often include small, loss-making airports that are cross-subsidized by revenues from larger airports. Cross-subsidization drives higher charges at larger airports, and smaller airports lack incentives to be efficient. No regulations prevent airport operators from cross-subsidizing airports under their control, for example, to set higher charges at large hub airports to subsidize smaller airports. IATA disagrees with cross-subsidization of airports, stating in 2019 that “airlines and their passengers are paying for facilities and services they do not need, do not use, and from which they do not benefit.”

¹ <https://op.europa.eu/en/publication-detail/-/publication/8e6db69a-e601-11e7-9749-01aa75ed71a1>

The ACD does not specify whether (and under what conditions) cross-subsidization is allowed and the degree of transparency required at a network level. Currently, transparency in the case of airport networks remains limited, as most networks do not disclose all information at the individual airport level. Consistent with the cost-related principle, the directive should prohibit cross-subsidization. To encourage compliance with this prohibition, airports should be required to publish accounts at the individual airport level.

Pricing of ground handling services

Reduced competition significantly affects airline operations and, therefore, air travel costs. We have also observed this lately in the ground handling services area.

Prices for ground services have increased since the pandemic. It seems that ground handling companies have been considerably stretched during the pandemic, and now they are compensating for the losses by increasing the prices users must pay. In its "Study on the impacts of the COVID-19 pandemic on the aviation market"² the Commission found that the average price increase in ground handling was 25%.

In some airports, ground handling service providers nominally exist at the airport but do not bid to attract customers on the grounds that they do not have sufficient staff. In others, like Amsterdam, this situation is exacerbated by the reduction in the number of ground handling companies operating in the airport. This reduction is not safety-related but designed to reduce competition and thereby ensure that ground handling companies are properly staffed and economically sustainable.

This is precisely the opposite of what the Ground Handling Directive (GHD) and market liberalization sought to achieve. The GHD was enacted to stimulate competition for ground handling services and ensure equitable treatment of all ground handlers. The arbitrary reduction in the number of ground handlers at an airport runs contrary to these objectives as it disrupts the competitive environment of the airport and fails to ensure equitable treatment for ground handlers.

Reducing the number of ground handlers adversely affects the airport's efficiency. A lack of competition can give rise to a monopoly or oligopoly, leading to a decline in service quality and an inevitable increase in prices. This could be detrimental to the entire aviation industry, resulting in a significant reduction in customer satisfaction.

Moreover, there is a risk of artificially inflating costs without enhancing safety. If a genuine issue arises, various initiatives and industry programs could be implemented to improve airport safety. Hence, it is vital to maintain the number of ground handlers at an airport at a level that promotes both competition and efficiency and to ensure that all user groups are consulted throughout the process. This consultation hardly ever happens. Users are informed but not consulted in any meaningful fashion and in those few cases that they are consulted, their opinion is not considered.

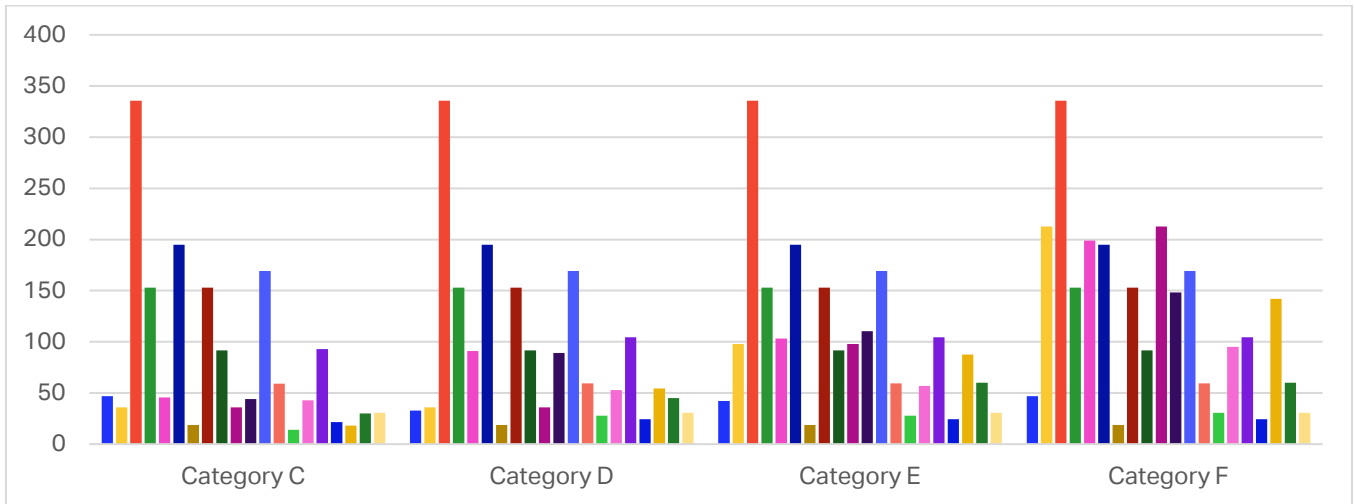
Even worse and of major concern are issues in cases where the number of providers is limited:

- The limitation is not objectively reasoned based on e.g. independent capacity studies. And even in such cases it should be of the airport's interest to lift the possible physical restraints over the time.
- The airlines, as the ones that have to pay for the services, are the only stakeholders that are not adequately involved or have a relevant say in the selection procedure; it is either the airport or an authority that has to perform the selection procedure, both in some case not fully neutral or independent.

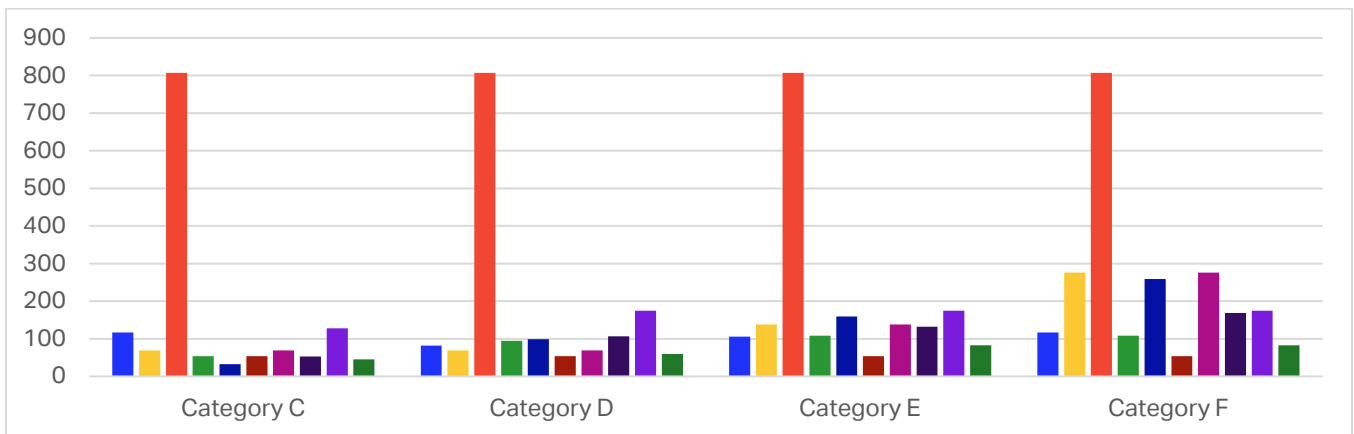
Particular concern lies in the monopoly of the management of centralized infrastructures. First of all, and as identified in the ARC analysis, *"The definition of the Centralized Infrastructure should be clarified and more restrictive, since airports are allowed to retain handling monopolies in several services and restrict the access*

² https://transport.ec.europa.eu/transport-modes/air/air-studies_en

for self-handling airlines and ground handling suppliers.” Airports use those infrastructures as a source of extra revenue, and unregulated charges are not always cost-related and are likely to increase even further than airport charges, as reported in the Steer study: “Airports will need to look at all sources of revenues, and any unregulated charges (such as centralized infrastructure for ground handling) are likely to increase even further than airport charges.” The high cost associated with certain services managed solely by the airport, such as Fixed Electrical Ground Power (FEGP) and Preconditioned Air Units (PCA), remains a challenge.



FEGP Cost per airport and aircraft category



PCA Cost per airport and aircraft category

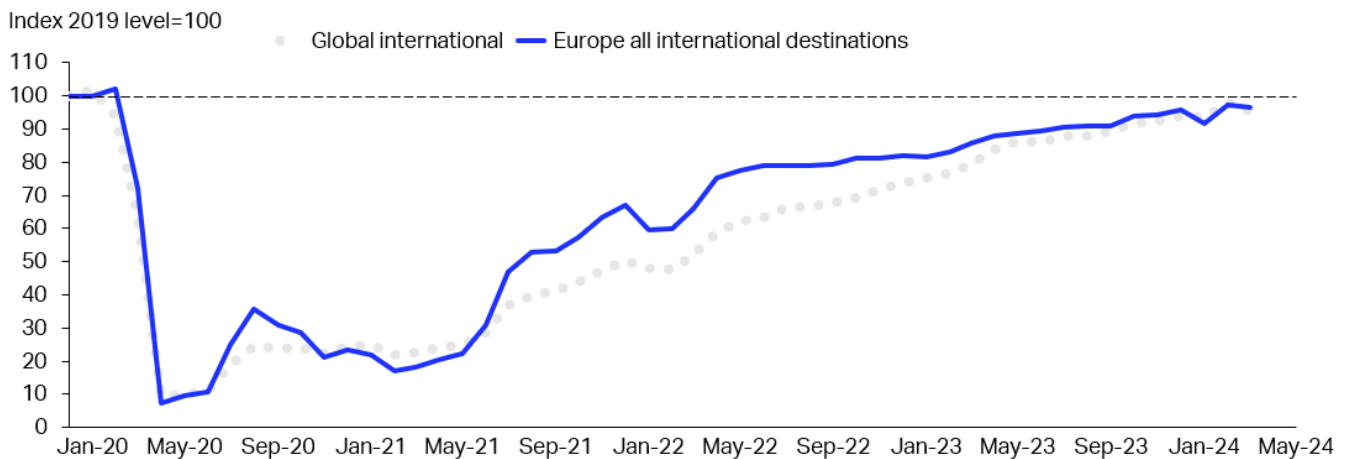
Those problems were identified in the Commission study on the impact of the GHD³ published in February 2009: “In some cases, the charges for the provision of the Centralized Infrastructure and the access to airport installation did not comply with the criteria of transparency and non-discrimination.” The directive has empowered airport operators, inherently monopolistic entities, to control another critical aspect of airport operations - ground handling services. They can select service providers, dictate operational conditions, and set pricing structures. IATA agrees with the conclusion of the ARC study that “Fees for the Centralized Infrastructure and the access to airport installation should be treated similarly to airport charges and included into regulation.”

³ https://transport.ec.europa.eu/system/files/2016-09/2009_02_ground_handling.pdf

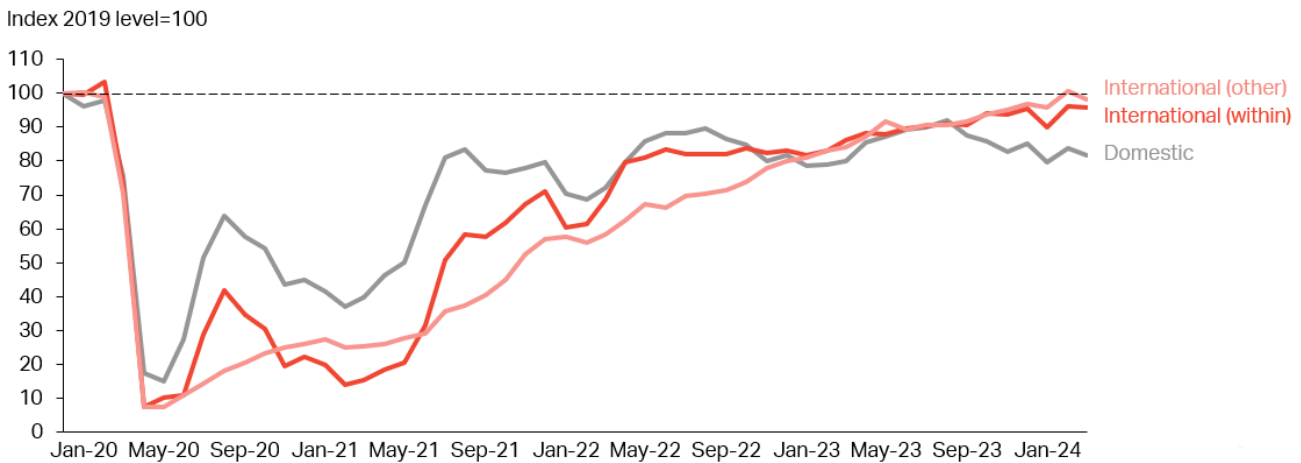
Connectivity

Despite the numerous challenges posed by the COVID-19 pandemic, such as border closures and increased health measures, the war in Ukraine, geopolitical tensions, and climate-related disruptions, the aviation industry in Europe has demonstrated remarkable resilience. It has recovered swiftly and outpaced other regions in this regard. In fact, the traffic levels in several countries during 2023 surpassed those of 2019, which was a record year for Europe. The outlook for 2024 is even more promising. Thus, it is evident that the system has effectively facilitated the revival of traffic and connectivity, both domestically and within the EU, as well as with third countries and regions.

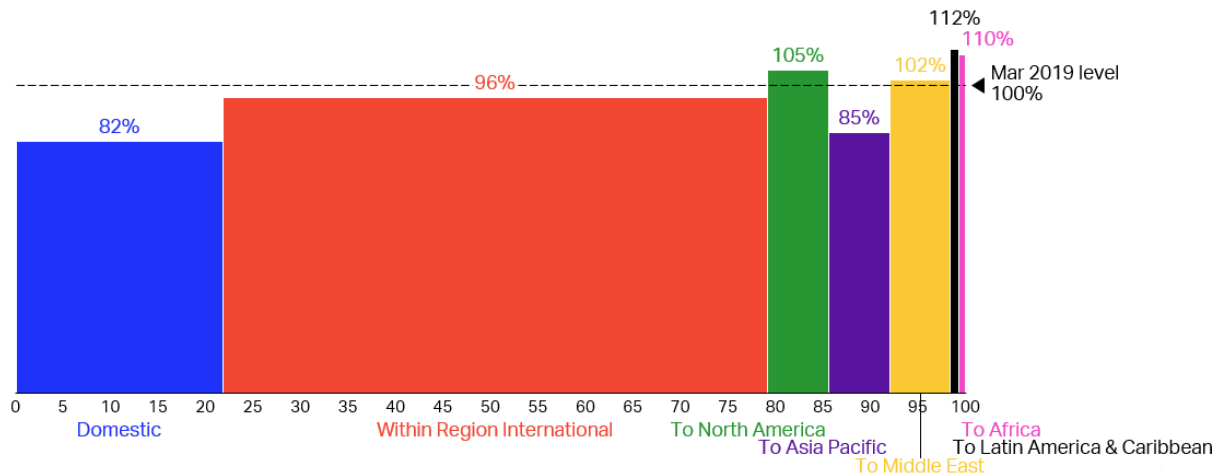
Europe's total international air connectivity in March 2024 is 97% of pre-COVID levels.



Within Europe, international air connectivity in Mar 2024 is at 96% of pre-crisis levels



The extent of recovery for Europe by Mar 2024, compared to Mar 2019 connectivity



Consumer preferences

Putting consumers at the core of EU aviation policy requires ongoing efforts to promote competition, enhance connectivity, encourage innovation, and monitor market behaviors.

Consumer welfare in terms of price, choice, and quality should always be at the core of the aviation regulatory framework in Europe. In that sense, **competition** and **connectivity** in air transport are crucial for providing consumers with affordable prices, improved services, more choices, and better access to destinations. They are key to ensuring consumer welfare in the aviation industry.

Airports do not inherently attract passengers and cargo or create connectivity. Instead, they act as facilitators, managing the passengers brought by airlines and supporting the connectivity required by airlines to serve their passengers effectively.

Any diminished competition ultimately affects not only airline costs but also airline operations, the ability of airlines to provide the desired quality of service, and their ability to compete. Even more importantly, this leads to higher air travel costs for consumers and businesses.

Needs of airport users

Airlines are key stakeholders who pay for the full value chain through the fares they charge customers. Airport and air navigation services investments, facilities, and services are merely enablers and, of course, system-critical partners. As a first step, we urge the Commission to foster harmonization and alignment, moving the ACD and GHD from directives to regulations. As has been seen with the Thessaloniki Forum guidelines, not legally binding are insufficient to provide the necessary protections from airport market power.

First, the new regulations should specify that supervisory authorities are independent and have the power to make decisions on any proposal related to airport charges or access to the ground handling market. This would ensure that an independent authority will make the ultimate decision on areas where there is any room for interpretation.

Second, the airports' role in the selection of ground handlers should be limited to checking compliance with regulatory/quality standards. Liberalization of the market should mean competition, so there should not be a reduction in the number of ground handlers for reasons unrelated to safety. This also should apply to centralized infrastructures where the regulator should exercise oversight of the costs charged to avoid abuse of the significant market power that airports have on those infrastructures.



Third, the Commission in the new ground handling regulation should also reconsider the definition of centralized infrastructure. Depending on the circumstances, charges for such infrastructure may need to be regulated, bearing in mind that it should not include services that can be provided by the airline itself or through private arrangements with their ground handler or another supplier.

Fourth, access to installations is not being achieved as intended – it is not uncommon for the GSPs to claim that they are not responsible for – and have nothing to do with the technical condition of – premises provided by the airport authority, which the GSP uses to store customer airlines' equipment. It makes sense to include the right of GSPs to request airport authorities to maintain installations in adequate technical condition or the right of GSPs to perform maintenance on their own.

Facilitate adequate competition and a level playing field between airports, airlines, and other service providers

Increased competition results in lower prices. We have all seen this since the liberalization of the European aviation market – even as threatened by increasing negative effects due to unilateral developments in the Commission such as FF55.

It is essential to highlight that the slot regime needs to facilitate adequate competition not only between EU airlines but also between all global airlines, EU and non-EU. The Commission needs to ensure that any review on SR considers that the EU airlines are competing with non-EU players. As stated in the Call for Evidence, “there is increasing competition from non-EU players, including non-EU hubs. Several crises (...) have put additional pressure on the system and tested the resilience” of the three items of legislation under review. This pressure is exacerbated by the increasing capacity crunch at EU airports.

It is therefore critical that the SR does not further hamper EU airlines with respect to non-EU airlines by deviating from WASG and setting a unharmonized, stricter set of rules. The better approach is to apply the WASG at all EU airports to ensure that all airlines are operating on a level competitive playing field.

It is also important to note that under Article 8.4 of the WASG, the coordinator is able today to consider connectivity, competition, and other factors when allocating slots. These criteria were reviewed and updated by the airports, coordinators, and airlines working on the 2017-2018 Strategic Review, and incorporated into the new, joint WASG. The Slot Regulation should explicitly require coordinators to follow WASG 8.4 to ensure that these important objectives inform their allocation decisions.

Competition between airlines

Intense competition between airlines has made air transport affordable and accessible to most of the population in Europe. However, this does mean that the same intensity and degree of competition can be transferred to airports. Especially (although not only) the large airports in attractive catchments cannot be duplicated or fleets simply transferred from one airport to another.

The characteristics of the airline industry suggest that air travel markets (O&D city pairs) are typically highly competitive. The nature of aviation is such that entry barriers for airlines to a given market (a specific route) are lower than the barriers to building a new airport. Even if on some routes demand is thin and can only facilitate one carrier, its pricing will always be disciplined by the threat of entry of other airlines. If the single carrier active on the route increased prices significantly above competitive levels, other carriers would also be attracted to the route and drive down the price.

Despite capacity constraints, the slot process has supported agile, flexible, and competitive aviation markets in the EU, delivering benefits for consumers in the form of:

- Low fares;



- Connectivity through a large choice of destinations;
- A high proportion of routes served by multiple frequencies and multiple carriers;
- A high proportion of passengers flying on routes served by multiple carriers;
- A large choice of carriers;
- The entry and development of new airline types at congested airports;
- Product investment in new and larger aircraft
- Product differentiation and a resulting large range of services (full-service vs. low-cost vs. hybrid);
- Service innovation and enhanced quality of services; and
- Competing route overlaps at different hubs.

Competition between airports

While the ACD was intended to establish a common framework for regulating airport charges at the EU/EEA largest airports, the Commission is understandably concerned that the directive is not fully achieving its objectives, particularly in ensuring effective regulation of airports with significant market power. The EU has successfully established frameworks to regulate market power in energy, telecoms, and other sectors. The industry has set out how a streamlined approach can also be practically applied to regulate airport market power and ensure that passengers do not bear the cost of excessive airport charges indefinitely. These are sound reasons why a streamlined approach can be used to assess airport market power.⁴

It is important to note - as highlighted above - that airports in the EU do not compete in the same way as airlines and businesses in other industries. for several reasons:

- Natural Monopoly Characteristics: Airports have natural monopoly characteristics due to their large, fixed costs and the need for extensive infrastructure. This makes it almost impossible for new airports to enter the same catchment area and compete.
- Geographical Constraints: Airports serve specific geographical areas, and it is often impractical for passengers or shippers to choose between airports based on price or service as they would with other goods or services.
- Consumer Behavior: Passengers choose flights based on factors such as price, schedule, and airline rather than the airport itself. This limits the extent to which airports compete for passengers.

A large portion of passengers still travel for business or to visit friends and relatives (VFR). Critically, in contrast to some categories of holidaymakers, the destination choices of business travelers and people traveling for VFR reasons are largely fixed. For business travelers, the destination is determined by the location of business need, and this limits both the ability of the business passenger to choose between origin and destination airports and the airlines to switch between airports. Similarly, destination choice for those traveling to VFR is largely predetermined. VFR trips make up an important share of journeys. For instance, the UN Tourism Highlight 2019 (link) shows that while there is an increasing share of leisure travelers, around 44% of worldwide travel is still for business or VFR purposes.

⁴ <https://www.iata.org/contentassets/fa95ede4dee24322939d396382f2f82d/ceg-airport-charges-report.pdf>

There is a strong preference to travel from the nearest airport, which is often the only realistic option. IATA commissioned two studies (2013⁵ and 2017) about airport competition. The 2017 study considers the competitive dynamics in terms of overlapping geographies or catchment areas – for example, between different airports serving the same city or metropolitan area. The study references an important analysis carried out by Frontier Economics investigating (1) how likely passengers are to choose one airport over another and (2) the role that relative prices play in influencing that decision.

Frontier Economics built a sophisticated empirical model using real booking data, including passengers' postcodes. They found that passengers' preference for traveling from their local airport is very strong. They found that for every 1% increase in distance, the likelihood of them flying from that airport declines by 4% on average. In terms of price, the research found that, on average, for every 1% increase in distance, a 1% change in relative prices would be needed to persuade passengers to travel to the more distant airport. They also found that as drive time to the alternative airport approaches 120 minutes, the probability of passengers using these airports falls close to zero (IATA, 2017). In reference to the 2022 survey, 89% of passengers agreed that they usually depart from the airport closest to where they live.

- Legal Restrictions: Governments often control where airports are built and typically limit the development of such infrastructure. This includes the granting of long-term exclusive concessions. In some countries, this is made worse by consolidating all airports under a single legal structure with cross-subsidies.
- Market Power: Many airports continue to have substantial market power. A recent IATA survey (2022) of 5000 passengers across several countries showed that:
 - a) 74% agreed that airports are monopolies.
 - b) 83% agree with the statement that the prices that airports charge should be independently and effectively regulated, like utilities (power, water, etc.).
 - c) 85% agree that Governments should prioritize policies that keep the cost of travelers using airports low.

Airports, in common with many other utilities and infrastructure assets, generally hold monopoly positions due to the capital-intensive and hard-to-replicate nature and lack of effective competition that results. They, therefore, must be subject to effective economic regulation where they hold substantial market power in order to ensure that efficient levels of charges and appropriate levels of service quality and capacity are available to consumers. It remains unclear why airports should be treated differently from other often regulated monopoly sectors such as networks for energy, rail, or telecommunication. In the two studies mentioned above, there are conclusions that we would like to highlight again here:

- Switching costs remain significant for airlines. Changing airports involves significant costs for airlines that include the costs involved in the physical switch of the airport (like relocating equipment and staff), as well as termination and negotiation of supplier agreements and loss of network economies. In addition, there are costs associated with marketing and communicating changes to routes. Also, limitations at nearby airports could limit switching, e.g., same airport ownership, lack of capacity, or lack of appropriate infrastructure.
- Airlines serve the underlying market demand and adapt to market conditions as much as possible. Route development is attributable to a wide range of factors, including underlying economic conditions, route profitability, and broader network strategy. As such, route development is part of a

⁵ Airport Competition, IATA Economics Briefing Number 11. IATA 2013 & Airport Competition: Myth or Reality?, IATA economics briefing, IATA 2017

normal process of network optimization as airlines seek to generate profitable traffic in an increasingly competitive environment. In most cases, market changes have been driven by and result from the intensity of competition in the airline sector, both at the individual route and network levels, rather than from competition between airports themselves. Therefore, the presence of route switching is not an indication of the level of competition between airports and, in fact, is a consequence of high competition in the liberalized airline sector. If airlines were able to easily switch capacity between airports this could represent an effective constraint on airports' ability to exercise market power through the setting of charges. As already mentioned, such switching is costly, and the reasons behind network development are related to the market and the nature and intensity of competition the airlines face from other airlines.

Competition between airports is often sub-optimal. The Directive was originally intended to address instances of limited levels of competition between airports.⁶ Yet the framework fails to distinguish between airports other than with regard to passenger volumes. Proportionate regulation of undertakings facing limited competition, commonplace in other sectors, is exceptionally absent from the airport sector.

Competition between ground handlers

While the GHD has introduced a gradual opening to competition, competition at airports – in particular with airports providing ground handling – remains limited, especially where there is only a maximum of two ground handling operators. This creates an oligopoly that hampers free competition and is often not even based upon objective criteria and physical restraints.

. Where airports offer ground handling services, they always have an advantageous position in comparison to other ground handlers as they do not have to undergo selection procedures at least every seven years with uncertain outcomes. Fair market competition conditions are not always consistently applied. In addition, in some airports, airlines cannot freely choose their ground handler. They are many times denied by the ground handler(s) of their choice, and they are referred to only one ground handler without them being able to send their tender to all.

The limitation and partially even decrease in the number of ground handlers at an airport is also cause for concern. The GHD was a crucial legislation enacted to safeguard the competitive nature of airports and ensure equitable treatment of all ground handlers but has instead granted airports monopoly powers over ground handling infrastructure and allowed airports to select and limit the number of entities in what was an otherwise competitive ground handling market.

Regrettably, the GHD has not only fallen short of its primary objectives, as the market has not achieved the level of openness and competitiveness initially envisioned but has remained unchanged since its adoption in 1996. As noted in the Call for Evidence, the industry has seen a significant change since that time. This lack of competition has led to escalating operating costs for airlines without a corresponding improvement in the quality of service provided to airport users. There have been numerous instances where the number of ground handlers allowed to operate at certain airports has been reduced by airports or governments for reasons unrelated to safety, security, capacity, or available space constraints. This reduction undermines the effective competition that the Directive was intended to foster.

This limitation is of special concern in "centralized" services, especially as to fuel following the approval of the RefuelEU regulation. In this regulation, aircraft operators are obliged to ensure that the yearly quantity of aviation fuel uplifted at a given EU airport is at least 90% of the yearly aviation fuel required to avoid tankering practices. Such obligation should be complemented, ensuring that in all airports, there is more than one fuel supplier. If not,

⁶ European Commission (2007)

this leads to another monopoly exercising power over airlines and, ultimately making travel and shipping more expensive for consumers.

When there is a lack of competition, competitive prices for specific services, or poor service quality (usually, the three things come hand-in-hand), airlines may decide or be compelled to undertake self-handling. It is important to note that airlines, in essence, do not aspire to be ground-handling companies. When airlines opt for self-handling, they seek greater control over their operations, potential cost reductions, and a guarantee of the required service quality. However, the current regulations present several issues that the directive does not address:

- **Self-handling Cap.** At several airports, the number of companies that can perform self-handling is limited. Unless there is a safety case, the market should be open to anyone who wants to manage their own operations.
- **Subcontracting:** When airlines opt for self-handling, it implies they assume responsibility for these tasks. The GHD does not provide any definitions, provisions, or guidelines on subcontracting. All market participants should have the right to subcontract, ensuring the main contractor guarantees safety and quality standards. In such cases, airlines and ground handling companies are responsible for the subcontractors, staff, and service, and ensure quality, safety, and efficiency.
- **Central Infrastructure:** various points, such as cross-financing ground handling activity and extensive interpretation to limit the market, such as for buses, or increase profit, such as in fuel storage and hydrant systems.
- **Selection Process.** Users must have a say on the selection if number of providers is limited.
- There are not sufficiently **independent authorities** if they are linked, even indirectly, to the airport owner and ground handling provider.
- **Unfair Competition and Barriers for Innovation.** Competition is harmed when one provider (the airport) has a permanent license, whereas the second (or others) have the risk of losing their license after the seven-year maximum selection period. There is no incentive for investments in innovation if the provider risks to lose its license after seven years. Conversely, there is no competitive pressure for the permanent license holder to innovate in this situation.
- **Airline Groups & Alliances:** Airlines often choose to join alliances or merge with other airlines, forming larger airline groups. This strategy could allow them to expand their network, reduce operational costs, enhance their brand visibility, offer additional benefits to passengers, and secure a competitive edge in the market. However, the current Ground Handling Directive has struggled to keep pace with these changes in airline alliance structures.
 - When the Ground Handling Directive was created, the concept of airline groups was less developed than it is today. Currently, airlines cannot offer self-handling services to other airlines within the same group unless one airline holds a majority stake in the other or a single entity holds a majority stake in each airline. Any airline that does self-handling should be allowed to offer the same service to airlines within the same group, regardless of the holdings.
 - The Ground Handling Directive does not consider alliances. No provision allows airlines to offer services to partners in the same alliance.

All issues above are unique and do not occur in other sectors. These restrictions are inconsistent with other commercial practices in the aviation industry and could undermine the competitiveness of airlines operating in Europe. The Commission should propose changes to the existing definition of ground handling to reflect this shift towards airline cooperation.

Transparent and independent oversight over slot allocation, setting of airport charges, and awarding of ground-handling contracts

Independent entities should exercise efficient oversight over slot allocation, setting airport charges, and awarding ground-handling contracts. Otherwise, operating in Europe will become more costly and less efficient, reducing airlines' ability to afford sustainable measures to improve their environmental performance.

There is a common issue in all three legislations: A truly fully independent and competent oversight is needed to ensure a balancing of the various interests of the stakeholders involved, based upon criteria that promote a competitive EU aviation sector. The regulator needs to be accountable for its actions. This means that it must be at least as independent as regulators in other sectors and needs to have clear responsibilities and the necessary powers to meet its objectives. All these points are notably lacking in the current ACD and GHD.

Measures to strengthen the independence and the role of regulatory authorities on airport charges are essential to ensure the effectiveness and accountability of airports. The same is missing for the ground handling sector, as the regulatory authority should decide on possible limitations, market access, central infrastructure, and the selection of providers. In all cases, the airlines should be fully involved and have a relevant say, as they must pay for the services and suffer from quality deficits.

We understand that the Commission considers it appropriate to allow appeals of regulator decisions (i.e. holding regulators to account in order to ensure they meet their statutory duties). IATA supports this position but the appeal process is lengthy, costly and not very effective. We, therefore, recommend the creation of an alternative dispute resolution mechanism involving expert arbitrators for ACD and GHD decisions. This would provide stakeholders with the ability to seek meaningful review of airports' decisions in a timely manner – i.e., prior to the approval of charges or selection of ground handlers.

As with regulatory supervision of airport charges and ground handling, the transparency and independence of the slot coordinator remains a vital and important pillar that should be further enhanced and ensured at all Level 2 and Level 3 airports in the EU. Resourcing and technology are critical elements to achieve uniform and consistent processes by all coordinators, while the provision of transparent data is key to ensure competitive outcomes.

We also recommend the Commission that the SR explicitly require Member States to regularly re-tender, through a competitive process allowing for airport and airline feedback, for coordinator services. With the current setup, coordinators are not readily accountable to the consumer and the travelling public in their decision making. They are also effectively immune from the impacts airports and airlines feel when deciding how best to manage disruption, impacts on the day of operation, or operational challenges. Competition breeds performance and motivates quality and solutions-driven outcomes.

Finally, it is currently difficult, expensive, and time-consuming to challenge a coordinator's decision. The courts are generally unfamiliar with the slots process and therefore unequipped to review allocation decisions without assistance from experts or extensive education by the litigants. We therefore recommend the creation of an **alternative dispute resolution mechanism**, involving expert arbitrators, for coordinator decisions. This would provide stakeholders with the ability to seek meaningful review of coordinator decisions in a timely manner – i.e., prior to the relevant season.

Regarding the ground handling market, there is no oversight in the tender process, there is no alignment between different tenders for different airports (even within the same member state), and user consultation almost does not exist. Insofar as it does exist, consultation is more information sharing than stakeholder involvement in decision making. The Commission should amend the GHD to make the ground handling system more inclusive and efficient by requiring oversight of the process and consultation with stakeholders on key decisions including ground handler selection.



Adequacy of airport and ground handling services in terms of quantity, quality, reliability, resilience, and investment needs

The ACD, GHD, and SR should all be reviewed to strengthen the quantity, quality, reliability, resilience, and investment needs of airport and ground handling services.

The declaration of capacity parameters by the airport managing body is included in the SR, but there is no requirement for this to be regularly reviewed and updated to ensure it is maximizing all available capacity in relation to the developing and changing demand patterns each season. The reality is that some airports declare the same parameters season after season due to no change in capacity, but this fails to recognize and consider how demand changes each season from both a consumer and airline perspective. Given this is the basis of the seasonal slot process, the regulation should be firm on the need to undertake capacity analysis and to review the traffic demand ahead of each season's declaration, subject to government oversight.

With respect to ground and airspace capacity delivery, at a minimum, there should be regulatory oversight of all capacity providers that encourages meaningful and realistic plans that have been declared to be fully operationalized and delivered. Where necessary, airports should invest in modern technology to ensure that this capacity declaration is done as efficiently as possible to maximize the use of existing infrastructure. When this fails, monitoring and management of performance should kick in.

Some ground handlers do not operate according to a minimum safety standard. There are no specific criteria to give preference to ground handling services to meet certain quality and safety requirements, to operate a certain percent of enhanced or alternative fuel GSE, or other similar concerns. The definition of criteria for approval of the ground handling service provider by the independent body should be expanded to include industry-recognized accreditation.

Other considerations

Is the existing EU body of law on airports still effective and the most efficient and cost-effective way to achieve the above-defined objectives?

The aviation market is currently grappling with significant challenges due to excessive, inefficient regulatory burdens and bureaucratic red tape. These hurdles are particularly damaging to the competitiveness of small and medium-sized airlines and secondary airports. Addressing these regulatory challenges is not merely a task of reform but a crucial necessity to unlock the full potential of the Single Market. In the midst of these regulatory complexities, the phenomenon of "gold plating" further complicates the situation. This practice, where there is no harmonization, no alignment with international standards, and Member States adding requirements to EU directives beyond what is required, not only intensifies the regulatory burden on businesses but also fragments the Single Market, creating uneven playing fields across Member States.

Given that Regulations are the most effective instrument for maximum harmonization, EU Institutions should unequivocally prioritize their use in Single Market rules. Harmonization through regulation fosters greater convergence on universally applicable rules, ensuring consistency across the EU.

Harmonization means regulations, not directives

Addressing the complexities of regulatory reform requires more than mere adjustments. The airport regulatory framework in Europe needs to be adapted and complemented by additional measures, such as ensuring legislative and regulatory efficiency. The policy agenda should prioritize greater harmonization in rules and better adherence to international standards. The interpretation of European directives, differs not only between different national legislators, whose task it is to transpose them, but also between the courts in litigation. This leads to fragmentation despite a framework of rules that should be unified at the European level. A consistent framework would diminish existing disparities between airports and Member States' regulations. Further



harmonization also makes it easier for public authorities to enforce EU law, offering better protection to users and consumers.

Currently, the level of regulatory intervention is not harmonized around Europe, so replacing Directives with a Regulation would permit greater harmony, and simplification.

The ACD is largely modeled on ICAO's policies on charges (Doc 9082). Since Doc 9082 contains policies which are not legally binding, legislation is needed to enforce such policies. An airport charges regulation may help realize more harmonization without abandoning the flexibility for regulatory authorities to tailor their approach to the specific situation arising at each airport.

A new charges regulation also empowers regulators to ensure that airport charges are set at competitive levels without being prescriptive about the methods they use to achieve this. An independent regulator equipped with clear objectives, powers, and an adequate level of resourcing does not need a list of exact instructions.

The same applies to the ground handling directive. A unique approach to tender processes and management of centralized infrastructures will protect users while guaranteeing proper cost and quality services.

The slots regulation should be refreshed

Some elements of the SR should be refreshed to align with the recently updated global industry standard, the WASG. This would ensure that the EU keeps up with the rest of the world and provide a level playing field between airlines on access and allocation policy, new entrant rules, slot performance monitoring, and transparency of information. All of these areas were updated in 2019-20 and should be adopted by the Commission given that airports, coordinators and airlines established and agreed the improvements.

However, as demand continues to grow without corresponding infrastructure improvements, it is increasingly important to use existing capacity efficiently and effectively. It is also important to ensure that the airports and coordinators are required by the SR to contribute to a sustainable way forward. Updating the regulation will provide an opportunity to address these goals.

Therefore, as we look for ways to maximize existing capacity to best meet customer demand, **it is vital that the SR provider greater detail on – and obligations regarding – the airports' role in capacity declaration and delivery. Likewise, the accountability of the coordinator should be enhanced to ensure that they are effective and productive, while becoming responsible to the customer in their decision making.**

Are the rules still relevant in light of the original but also new political priorities (e.g. sustainability, green investments, and incentivizing environmental performance, resilience, and easing administrative burden) and coherent with other EU legislation and policy?

We consider the ACD as a minimum standard on how a "charges setting process" should be conducted. Its provisions highlight the basic principles for consultation, transparency, non-discrimination, and the establishment of an ISA.

While this is an important starting point, the ACD in its current form does not address the risks of abuse of market power and does not protect users from excessive and unreasonable airport charges. In addition, having a directive instead of a regulation prevents harmonization and a level playing field. This also applies to GHD, where each Member State or airport can currently apply its provisions in a completely different manner in terms of tender processes, management of centralized infrastructures, and other non-regulated charges.



Environmental links to slot allocation decisions are complex and would not help the industry achieve its global sustainability objectives. The industry has identified the most appropriate and effective means to manage its environmental impact, which it has committed to at ICAO.

There would be unintended consequences if extreme approaches were taken at (only) coordinated airports to require specific operating conditions related to the environment and slots, considering the industry's objectives related to sustainability are global for all airports and operations.

Regarding **resilience** and the existing SR, the coordinators should be able to react when crisis or demand shocks require alternative and more flexible approaches. The value of the Worldwide Airport Slot Board's recommendation for managing COVID was recognized by regulators and adopted well by global governments. We would encourage the Commission to align with the WASG and future recommendations to increase resilience.

Do the three pieces of legislation bring the EU added value?

With the implementation of the ACD, we have seen improvements in the arrangement of consultative meetings as well as improved transparency. In addition, the establishment of an ISA, when truly independent and staffed with the right resources, has helped in some countries to address disagreements between the airport and its users. While still not properly addressing the risk of airports abusing their market power, the directive brought an overall improvement compared to the previous situation.

Also, since the implementation of the GHD, the market conditions have improved. However, the current form and content do not cover all the needs of the current environment.

Similarly, we believe that the SR has been effective overall in supporting connectivity and competition for the EU aviation industry. We believe that the time is now ripe for the EU to refresh the SR to both align with the WASG and add additional provisions to ensure that the obligations of airports and coordinators are also fully addressed alongside those of the airlines and to enhance flexibility in the process for airlines' schedules to adapt to consumer preferences.

We welcome the Commission's interest in the Call for Evidence in assessing "the interplay of EU rules with global industry standards and worldwide practices." The Worldwide Airport Slot Board's role is to ensure the continual review and approval of changes to the WASG for improvement and policy development, fostering a globally consistent implementation of the WASG. Importantly, these guidelines are developed by industry experts who consider deeply the impact any policy change would have and work in the interest of all stakeholders and business models.

The EU should not isolate itself from global practices and standards on this topic but support the role of the Slot Board as the industry forum for slot policy development. We encourage the EU to be the leading advocate supporting globally consistent implementation of the WASG and the role of the Slot Board as an industry partner in slot policy development.

The lack of harmonization with stricter rules for EU industry would contradict one of the Commission's concerns of increasing competition from non-EU players, including non-EU hubs and would jeopardize one of their key objectives of setting a level playing field among airlines. By the same token, imposing slot restrictions on non-EU airlines that are not contained in the WASG runs the risk of retaliation from their home countries if these carriers lose their slots as a result.



Recommendations

It is crucial to ensure that policies are not only well-informed but also effectively implemented. In that sense, the Commission should unequivocally prioritize the use of Regulations in the formulation of Single Market binding rules. The drive towards simplification is guided by a fundamental principle: regulations should facilitate, not hinder, economic activity and innovation within the Single Market. IATA therefore makes three main recommendations:

- A review of only the full package of legislation, under a holistic approach. IATA believes that the Fitness Check will fail to achieve its expected objectives unless all three of the pieces of legislation are included in the process.
- Transformation of the Airport Charges Directive and the Ground Handling Directive into EU Regulations.
- Alignment of the Slot Regulation with the recently updated global industry standard on slot allocation, the WASG, avoiding harm to EU aviation through misalignment with global slot rules. Further, the Commission should ensure that the Slot Regulation adequately addresses the necessary obligations of all stakeholders – airports, coordinators, and airlines.