

Airport regulation: experience in Germany, UK and Australia

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Outline

- Issues and questions
- Germany: framework agreements and civil law court cases
- EU: a common regulatory framework
- UK: constructive engagement
- Australia: light-handed regulation
- Some outstanding issues
- Conclusions

Issues and questions

- Conventional approaches to airport regulation
 - Airport charges & investments reviewed on request or at periodic (5 year) intervals
 - Regulator hears views then decides
- This is now changing – why?
- Which arrangements best for operating efficiency, new investment & customer services?

Germany: background

- Traditional regulatory approach (s 43)
 - Airports mostly owned by federal states
 - Separate state regulatory authorities
 - Approving cost-related charges
 - With limited powers to initiate changes to charges
- Deficiencies
 - Cost-plus, poor efficiency incentives (cf Niemeier)
 - Poor legitimacy (rules unclear), regulators not independent of airports, inefficient split of regulation into 15 bodies (cf Mueller et al)
 - System favours airports; airlines critical of it

Germany: Civil Law cases

- Airport privatisation policy (1982, sporadic)
- Airlines challenged airports in Court
 - German Civil Code (s 315)
 - Unilaterally fixed charges: “principles of equity”
 - EU Directive 1996/7 referred to “objective, transparent, non-discriminatory criteria”
- Dusseldorf 1997/2003: fee not cost-related
- Frankfurt 2001/2008: fee not transparent
- Cologne/Bonn 2006: calculations unclear

Germany: Framework agreements

- **Hamburg price cap contract 2000-04**
 - Negotiated by shareholders, airlines, governments (top-down)
 - Joint boards for monitoring and control
 - Sliding scale sharing, agreed to abandon Sept 11 2001
 - Innovative, fair, flexible - contract resistant to crisis
- **Frankfurt MOU on airport charges 2002-06**
 - Contract negotiated by airport & airline groups (bottom-up)
 - Innovative, benefit & risk-sharing, airline growth incentive
 - More flexible and efficient environmental charges
 - Review Board, better commercial relationships
- **Limited take-up elsewhere**
 - Hannover, Dusseldorf, some renewed, some not

EU Directive 2009/2011

- Common framework for regulating charges
 - Does not preclude or require price controls
 - Requires regular consultation between airport and users on charges & quality of service
 - Charges must be transparent
 - Airport to provide info on costs, revenue, method; airlines info on traffic forecasts, projects, needs
 - Where possible tariff changes by agreement
 - If not, option of appeal to independent authority
 - Airport required to consult on investment plans

Germany: Lessons & policies

- Existing regulation inefficient & biased
- Court cases: some protection but costly
- Framework agreements: useful but limited
- EU regulation enables airline appeals?
 - But appeal lies to German state regulators
- Adopt UK price-cap regulation?
 - States not interested given ownership of airports
 - State ownership a main source of inefficiency?
 - UK regulation problematic anyway (see next)

UK price cap regulation

- Civil Aviation Authority (CAA) initially took conventional RPI-X price cap approach
- Became concerned about review process
 - Serious conflicts between airports and airlines
 - Difficult for regulator to choose investment plan & resolve disputes – why did regulator know best?
 - Regulation could distort the situation
- Airport competition hence deregulation
 - CAA argued to deregulate Manchester & Stansted
 - Govt accepted for Manchester, not Stansted
 - Latest proposal gives CAA power to deregulate

Constructive engagement 2005

- CAA asked airlines & airports to try to agree
 - Quality of performance standards, traffic forecasts and investment programme
- CAA retained responsibility for
 - opex, cost of capital, financing & final price control
- Largely achieved at Heathrow & Gatwick
 - Despite most expectations
 - Plus improved relationships and understanding
 - Delay at Stansted, agreement not reached initially

Constructive engagement cont'd

- Competition Commission initially critical
 - Limited availability of information by BAA, capex growth during & after process, CAA should be arbiter
- 2008 CC restarted CE process at Stansted
 - With delay to second terminal & runway, most difficult issue now off the table, agreement was reached
- Competition Commission views
 - “airline customers generally in much better position than regulator to suggest needed development”
 - Future airlines' & passengers' interests? They don't deviate from those of present ones
 - Made recommendations to improve process (more information by BAA, and CAA to appoint facilitator)

UK later developments

- 2009 CAA used similar process (Customer Consultation) for air traffic control services
- Reflected lessons of CE experience
 - More structured process agreed in advance
 - These changes agreed to be an improvement
- Process went well and concluded on time
- 2011 airport price controls extended 1 yr
 - New capex and prices negotiated between airports & airlines
 - Now exploring enhanced approach (negotiated settlement?) for 2013-18. Parties have proposed some new ideas (below)

Australian airport regulation

- Privatisation 1997/8 with 5 yrs price freeze
- Since 2002 no price control
- But note other aspects of framework
 - Emphasis on commercially negotiated outcomes
 - Govt guidance – aeronautical pricing principles
 - ACCC monitoring prices, quality, returns
 - Threat of re-regulation if airport misconduct
 - Part IIIA Access regime – ACCC arbitration of airport-airline disputes if airport declared
- Combination of ex ante and ex post

Evaluating Australian approach

- Productivity Commission 2006
 - Easier investment, high productivity, good service quality, prices not excessive, modest compliance costs, developing commercial relationships
 - Non-price terms less satisfactory, some relations strained, lack of guidance on asset valuation, no clarity on investigation of conduct
 - Continue - with guidance on valuation & conduct
- ‘Show cause’ proposal to strengthen threat of re-regulation, but Government later abandoned this
 - Threat to financing, wouldn’t help to resolve negotiations, resource- and time-intensive
 - Comment: Reregulation not a credible threat anyway

Some outstanding issues

- Germany, UK, Australia moving to negotiations
- Is independent dispute resolution desirable?
 - Productivity Commission 2006 concern that this will reduce incentive to commercial bargaining & lead back to regulation
 - Evidence in Australia and elsewhere suggests not – once the right is established, parties prefer to negotiate
- Danger of excessive investment?
 - Forsyth: More accessible dispute resolution mechanism would strengthen hand of airlines in negotiating with airport. Agree.
 - Public ownership encourages excess, solution privatisation
- Danger of insufficient investment?
 - Rationale – collusion? Evidence? More likely that airlines & entrants will press for investment if there is a demand
 - Again, better dispute resolution will strengthen their hand

More outstanding issues

- **Danger of light-handed cost-plus regulation?**
 - Forsyth: Guidelines should stress incentives, not only cost and profit. Agree. Independent dispute resolution not by regulator?
- **Need to assess efficiency?**
 - F & N: need for benchmarking productivity, prices, profits, quality of service. To assess performance of airports & regime, investment plans, preferred quality, need for re-regulation
 - Will it really solve all these problems? Do benefits outweigh costs? Is regulator best judge? Is benchmarking best means?
 - UK regulation moving away from detailed regulatory calculations, towards more involvement by parties
 - Eg Joint working groups on opex, design of incentives, Gain-share for opex savings found by airports & airlines together

Conclusions

- Regulation of airport charges: yesterday's approach
 - onerous, distorting, unnecessary
 - Germany, UK, Australia moving away, to different extents
- Way forward: commercial negotiations, agreements
 - better tailored to needs of parties, working together
- Independent dispute resolution essential
- Main outstanding questions in Australia
 - Is monitoring still necessary? How often? By whom?
 - Are guidelines helpful? How detailed? By whom?
- Australia could be at frontier of airport regulation?