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AIRPORT CHARGES: IT IS TIME TO DECIDE

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In the European Union, the liberalization of the air sector was a process with several objectives. Firstly, the objective was **to increase efficiency for the benefit of passengers**. Secondly, but equally important, **liberalization was a tool for the creation of the European Single Aviation Market**. These two objectives are not contradictory. The Single Market should increase efficiency in air transport as in other industries. However, it is important to acknowledge that it has also been an objective in itself: a political objective for an ever closer union among the peoples of Europe. The EU institutions

have applied the usual regulatory toolkit to the industry. The management of infrastructure layer (airports) has been separated from the operation of the transport layer (airlines). The focus of the EU institutions in their effort to create the Single European Sky has focused on the transport layer. Exclusive and special rights for the provision of air transport services were eliminated. Air traffic control has been increasingly harmonized.

The process has been successful from the perspective of the passengers. Competition has

reduced prices, so the number of passengers has increased. Competition has also allowed new business models to succeed in meeting passenger demands, like low cost flights. Reform has been successful, even if transition to the new model was sometimes difficult.

The process has also been successful from the political perspective. A more efficient air transport industry has facilitated an increase in all kinds of exchanges among citizens across the European Union. The Single Market has been reinforced.

The reform of the infrastructure layer (airports) has proven more difficult. This is not a surprise. The same obstacle is faced in other transport modes such as roads and railways. Infrastructure poses specific challenges in terms of potential competition as well as in terms of investment. In parallel, political challenges have proven to be more relevant. **Regulation of infrastructures is closely connected to the national and even local strategies for the development of the territory.** Authorities and citizens have mostly accepted markets as drivers for the provision of transport services, but they are more suspicious of markets as drivers for the management of infrastructures and the territory.

In other transport modes, EU Directives have defined a clear regulatory regimen for infrastructure. In railways, for instance, Directives assume that infrastructure is a natural monopoly and infrastructure managers, publicly owned entities, have been regulated accordingly. Furthermore, it has been identified that railway infrastructure is a national monopoly. As a consequence, it has been the objective of the EU institutions to ensure that national natural monopolies do not prevent the single

European market in the provision of transport services over such infrastructures.

The regulation of air transport infrastructure in the European Union lacks a clear approach. EU Directives do not qualify airports as natural monopolies. The Directives do not define in a specific way whether airport managers have any kind of market power in relation with airlines and other users of the infrastructure. The Directives do not impose procedures to identify the existence of market power in the form of market reviews as in telecommunications (and airports in some Member States).

Formal requirements imposed by Directive 2009/12/EC on airport managers demonstrate the underlying suspicion on their position in relation with airlines. The obligations on transparency and non-discrimination, as well as the obligations to develop consultations on charges, are the evidence. After more than 20 years of deregulation, the question on whether airports hold market power in their relation with airlines has not been answered. Airlines defend that the answer is self-evident: airports have market power as the managers of infrastructures with no competition. Airport managers respond that they have competition from other transport modes and from other airports. They point to competition for transit services and to increasing competition among destinations.

We think that this is a question that cannot be left open any longer. It is necessary to ascertain whether effective competition exists, making use of the existing tools in competition law and sector specific regulation (market definition SSNIP tests, etc.).

Based on the result of such an analysis, **regulation has to be redefined.** For airports with effective

competition, the existing regulatory obligations are cumbersome and an unnecessary burden. For airports with little or no competition, the existing obligations are not sufficient. Clarification is particularly necessary as there is increasing participation of private actors in airport management. Private investors deserve legal certainty. The existing lack of definition in the EU legislation on the approach to airport charges creates uncertainty. The regulation of airport charges is the next step in the construction of the Single Aviation Market. Air transportation is a system where a balance between all players is necessary. It is necessary to decide the best instrument to define the balance between airports and airlines: the market or regulation.

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FSR Transport is dedicated to policy dialogue, policy-relevant research, training, and networking in the area of transport regulation in Europe. It is concerned with the regulation of all modes of transport and a wide range of other topics related to mobility.

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