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Conclusions of the Seminar on European Regulation of Airport Charges,
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How to find an Agreement on the Future of Airport Charges Regulation

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Airports and Airlines are still far apart when it comes to the discussion about a possible revision of Directive 2009/12/EC on Airport Charges. This, at least, transpired clearly at the (follow-up) Seminar on the Regulation of Airport Charges held on May 28th, 2018 at the Florence School of Regulation. Consequently, the Commission will have to make some tough decisions as to the way forward.

Things had, however, started very positively: approximately a year earlier we had held, also in Florence, a high-level Executive Symposium on

European Regulation of Airport Charges, during which CEOs of both European airlines and European airports subject to the provisions of the Directive, together with Commissioner Bulc, had stressed the importance of finding an agreement on a revised Directive. It turns out that we are still far from such an agreement today.

Let me try to formulate my personal conclusions as resulting from our seminar in the hope that they may be useful for a way forward. **It is, indeed, now time, in my mind, to somewhat “normalize” the air**

transport sector. Air transport is a network industry comparable to telecommunications, electricity, railways, and others, where different infrastructure operators and service providers ultimately have to collaborate, so that the users/customers receive high quality services. More often than not, this implies an active role by a regulator, charged with the difficult task of making sure that interconnection, interoperability and seamless services provision work in the interest of the customer.

Yet, precisely this may be difficult, as we seem to lack a common understanding between airlines and airports what the problem exactly is. Consequently, there is no agreement as to whether regulation of airport charges is even needed, much less what exactly would have to be regulated and how and by whom such regulation would have to be made.

At the heart of the disagreement between airports and airlines seems to be the question of market power: while airlines do think that airports do (or for the Directive ‘may’) have market power, airports, instead, think that they are exposed to fierce competition and that this whole market power discussion is moot. If there is market power at all, it is rather on the side of airlines at certain airports. Probably both are somewhat right, but the current Directive is focused on airports supposed or assumed to possess a sufficiently high degree of market power so as to justify some sort of supervision and a rational discussion in this situation seems difficult for the time being: airlines seem to want to strengthen the Directive, while airports question its rationale altogether.

But what can already be said at this point is that **one single approach clearly does not fit all:** airports are different by their size, by their relationship with their respective airlines, by their potential for growth, etc. All this calls for a more nuanced approach, at the least when it comes to assessing their market power. This probably also means that **a revised Directive should leave some leeway to the national regulatory authorities,** thus making it possible for them to adapt its implementation to national and probably even local situations. But, keeping this in my mind also means to give more power to the national regulators. But this of course only makes sense, if the regulators simultaneously are independent and operate in a fully transparent manner.

At the Seminar, the Commission has presented possible options to move forward, ranging from no changes to the current Directive to abolishing it and relying from now on solely on competition law. These policy options were presented as part of an ongoing impact assessment on a possible revision of Directive 2009/12/EC on Airport Charges. To support the Commission in this exercise, an independent consultant (Steer Davies Gleave) is currently carrying out a study aimed to offer a systematic overview of the different options and their potential consequences.

An indicative “tour-de-table” among the participants to the Seminar actually showed a preference for the middle ground, which may, in the absence of a consensus among airlines and airports, be the only realistic way forward. **This middle ground calls for an amended Directive on airport charges, especially when it comes to the role of the**

regulators – the so-called Independent Supervisory Authorities (ISAs). They should become more accountable and more independent, while at the same time they should be more focused on the consumer and be more transparent. The Commission would define the screening criteria against which the ISAs would assess the market power of the airports, and, in case market power is suspected, perform a market power assessment. Remedial measures, if deemed necessary, could comprise price monitoring, rate-of-return regulation, or price cap regulation. But in any case, these measures would have to be proportionate to the airport's market power, as determined by the ISA.

I personally think that this is a reasonable way forward which both stakeholders can live with. The price for both stakeholders is a strengthened role of the ISAs, which, however, opens the door to a certain fragmentation of the European regulatory landscape, as the ultimate power of the ISAs depends, like in all other network industries, on national and thus political considerations.

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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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