

AIRPORT CHARGES AS AN INSTRUMENT OF COMPETITION BETWEEN AIRPORTS IN THE EUROPEAN UNION. LEGISLATIVE ASPECTS

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Abstract

The dynamic development of the European air transport market is the result of the liberalisation processes that have taken place in the European Union over the last thirty years. The EU's aviation policy has not only widened the access of carriers to the market, but has also increased competition in the air transport sector as a whole. The article looks at regulations concerning the system of airport charges as a mechanism used by the airport managing body to ensure a competitive position on the market. The analysis covers international, EU and national law on airport charges. ICAO documents concerning commercial activities of airports, which are not legal standards but have to be taken into account due to their importance for the characteristics of the subject of the study, are also discussed.

Key words: regulation of airport charges, competitive position of airports, limitations of competition.

Introduction

The European Union's transport policy, aimed at facilitating competition and encouraging business start-ups, has brought about a wide range of changes in the European aviation market over the last three decades. As a result of the liberal regulatory framework, every EU air carrier has been granted full commercial freedom to operate services on all routes between and within EU Member States, with no restrictions on frequency or pricing. This situation has encouraged the creation of new air transport companies with a more flexible business model – low-tariff carriers offering low-cost point-to-point flights between two selected airports. Thanks to their attractive ticket prices, these companies quickly became competitors of scheduled airlines, permanently changing the structure of the incumbent air transport market.

The nature of their activities has also affected the economic situation of airports. In order to minimise the costs of air transport services, low-tariff carriers have been able to abandon the use of an airport if the terms of an agreement were inappropriate for them. This exercised a significant competitive constraint on small airport operators, often dependent on a single carrier.

In order to meet the requirements arising from the dynamic growth of air transport and the consequent increase in the number of passengers checked in, airport managing bodies have taken extensive measures to increase airport capacity. These mainly consisted in the modernisation of the existing infrastructure, which required large investment in runways, aprons, terminals and other airport facilities necessary to service aircraft. The implementation of modern information technologies resulted in significant changes in the systems of reservation and distribution of airline tickets and check-in systems for passengers and luggage. In order to control passengers and their luggage, it was also necessary to create a costly system of protection against acts of unlawful interference.

The airport operating conditions presented in the outline indicate that airports are companies with fixed, high operating costs, which are largely borne by the managing body regardless of the number of daily take-off and landing operations and the volume of passengers handled. This means that in order to ensure their profitability, airports must strive for air carriers by increasing the scope and quality of services provided and by rationalising the application of the charging system. Charges levied on airport users are an essential source of revenue for the airport operator from aviation activities and the possibility set of setting them is an essential instrument for ensuring a competitive position vis-à-vis other airports. The purpose of this article is to try to answer the following problematic question: *How can EU airport managing bodies use the airport charges system to optimise revenues and maintain a competitive position in the market under legal provisions?*

Regulation of airport charges in international law and ICAO documents

The need for global harmonisation of airport charges systems was already identified during the International Civil Aviation Conference held in Chicago in 1944. The regulations developed at that time were shaped by the generally accepted and respected principle of State sovereignty over the territorial airspace, giving States the right to decide on the use of their airspace and territory for civil aviation purposes¹. The issues of economic regulation of the air services market, including the issue of determining charges for using airports, were perceived by the contracting parties

¹ The principle of national sovereignty is laid down in the Convention Governing Air Navigation, signed in Paris on 13 October 1919, Journal of Laws of 1929, No. 6, item 54.

as the exclusive domain of the implementation of the internal aviation policy of individual States. It should be recalled that in the 1940s, airports were still few in number (mainly located in large urban conurbations) and owned by the State. As a result, these companies did not operate under competitive conditions, which gave them a monopolistic position on the market. The restrictive approach to the issue of international air transport presented by the countries participating in the Chicago conference resulted in legal solutions being adopted during the conference, which were notable for the number of restrictions on access to the air transport market and restrictions on competition. Those rights and restrictions are addressed to Member States of the International Civil Aviation Organisation (ICAO).

International principles on the economic aspects of the use of airport facilities and services are laid down in Article 15 of the Chicago Convention² - *Airport and similar charges*. This provision obliges signatory States to make airports of public use available to all aircraft (national and foreign) on uniform conditions and to impose charges for the use of such airports by carriers (both scheduled and non-scheduled) of any foreign state no higher than those paid by national carriers. Moreover, in order to ensure transparency of the airport charges introduced, States were obliged to publish them, while informing the ICAO³. Article 15 also reserves the right for the Council to examine airport charges (and other facilities) at the request of the State concerned. In such a case, the ICAO Council shall report and make recommendations for consideration by the requesting State. This procedure shall be designed to prevent discrimination against foreign airport users.

In view of the need to specify the general provisions of Article 15 of the Chicago Convention, the ICAO has developed two following normative documents containing guidelines for Member States and airport managing bodies on setting airport charges: *ICAO's Policies on Charges for Airports and Air Navigation Services* (Doc 9082) and *Airport Economics Manual* (Doc 9562).

The document laying down the rules for the introduction and charging of airport charges and navigation services (Doc 9082) indicates that airport charges must be proportionate to the costs incurred in providing civil aviation services. It was noted that the overall costs associated with the provision of services by airports are increasing steadily due to the need to meet the requirements of fast-growing air traffic. Airport charges should constitute a balanced value that, on the one hand, satisfies the economic interests of the service-providing airports and, on the other hand, of carriers and other airport users. This balance of interaction between airport managing bodies and airport users is further influenced by factors resulting from global, national or regional political and economic developments. The ICAO has pointed out that airports have relatively high fixed costs which are mainly covered by

² Convention on International Civil Aviation of 7 December 1944, Journal of Laws of 26 June 1959, No. 35, item 212, as amended).

³ This information is collected and published by ICAO in the *Tariffs for Airports and Air Navigation Services* (Doc 7100).

carriers' fees for services provided by airport operators. Therefore, airport revenues depend directly on the volume of traffic. If it is reduced, maintaining a constant level of safety and quality of service is a major challenge for the airport operator. Airlines' business strategies are also a source of difficulty, as they are constantly striving to reduce their operating costs in order to face increasing competition on the international air transport market. In addition, unlike airports, they have the ability to respond quickly to demand by closing routes or reducing the frequency of operations. Under these circumstances, there is a need to regulate airport charges in such a way as to balance the economic interests of all interested parties.

In Section I, the Council of the ICAO endorsed the application of principles of best practices of good corporate governance for airports. With the aim of promoting transparency, efficiency and cost-effectiveness, airport management should apply best practices in operation and management in all areas of an airport regardless of whether it is owned and operated by the public or private sectors, and of whether or not it is profitable. The document under examination sets out four basic principles to be applied when establishing airport charges: non-discrimination, transparency, cost-based charging and consultation on charges. The principle of non-discrimination directly derives from Article 15 of the Chicago Convention. The principle of transparency requires that every airport user should be fully informed of the reasons for the airport charges and whether they concern only services that are actually provided or closely related to civil aviation. The aim of this transparency of charges is to eliminate unfair market practices. The principle of cost orientation is linked to the principle of transparency, so as to reflect the actual expenditure incurred by an airport in developing and maintaining infrastructure, security and safety. The application of the last principle - consultation of charges - was considered to be extremely important in the process of shaping airport charges. The purpose of the consultation is to familiarise airport users with planned changes in charges and to obtain their views on such changes and the impact they may have on their operations at the airport in question. The document underlines that the lack of consensus between the airport managing body and users gives the airport managing body the right to make the proposed changes to the charges. At the same time, the user has the right to appeal to a body independent of the managing body, if any. Otherwise, it is recommended that all efforts should be made to reach agreement on the proposed changes.

Section II of Doc 9082 describes the types of airport charges that can be classified as airport charges and how they are calculated. According to the classification adopted by the ICAO, airport charges include: landing charges, parking and hangar charges, passenger services charges, security charges and environmental (noise-related and emissions-related aircraft) charges.

The landing charge is calculated based on the maximum take-off weight of the aircraft (MTOW). The source of information on the MTOW shall be the certificate of airworthiness or other documents where it is contained. In certain situations, such as congested airports or increased traffic during peak hours, the ICAO allows fixed charges to be applied to aircraft or a fixed part with a weight-dependent component.

If the landing charge includes an Approach Control Service (APP) or an Aerodrome Control Service (TWR) charge, the charge should be calculated taking into account the indications for the calculation of navigation charges. The number of kilometres travelled by aircraft on the route of the flight cannot be a decisive factor in the calculation of the landing charge.

The ICAO used the MTOW value or aircraft size as the basis for calculating the parking charges in conjunction with the parking time at the airport in question. Charged parking time should be determined by airports in accordance with local air traffic, surface availability or other conditions. With regard to the passenger charge, the ICAO points out that it should, where possible, be levied on aircraft operators, as levying a charge directly on passengers at an airport would have a negative impact on the management of airport terminal capacity. Security charges are intended to cover costs directly linked to the provision of security to airport users⁴. The ICAO allows for the establishment of a separate charge or the inclusion of security costs in other airport charges. Regardless of the form of cost recovery, the formula used to calculate these charges should reflect their real value. The charge may be based on the number of passengers served, the value of the MTOW or a combination of both.

The above-mentioned charges are standard at all airports. Two more types of charges which relate to environmental protection shall be imposed on airport users only in duly justified cases. Noise-related charges can be introduced at airports that are experiencing noise problems. They may only take into account the costs associated with noise abatement or prevention. They should be linked to the landing charge and based on the noise standards indicated in the noise certificate⁵. Aircraft types are normally categorised and a fee placed against each according to their relative impact. As with noise-related charges, emissions-related charges can also only be introduced at airports where air quality problems are detected or predicted. They are intended to cover the costs of air pollution abatement or prevention. These charges may be linked to landing charges or a separate title directly reflecting costs.

In line with ICAO recommendations, each State should establish its own legal basis for the efficient and effective collection of airport charges.

The aim of the second document, the *Airport Economics Manual* (Doc 9562), is to facilitate the implementation of the ICAO's policy on charges in Doc 9082. It provides practical guidance to States, airport managing bodies, charging authorities and regulatory bodies to support effective airport management. The document

⁴ The obligation of Member States to ensure adequate security measures for civil aviation (including at airports) is laid down in ICAO Annex 17 - *Security: Safeguarding International Civil Aviation Against Acts of Unlawful Interference*, 9th Edition, 2011.

⁵ Standards in this respect are set out in ICAO Annex 16 - *Environmental Protection*. Volume 1 – *Aircraft Noise*, 6 Edition, 2011; vol. 2 – *Aircraft Engine Emissions*, 3 Edition, 2008. See also the Regulation (EU) No. 598/2014 of the European Parliament and of the Council of 16 April 2014 on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Union airports as part of a Balanced Approach and repealing Directive 2002/30/EC, OJ of the European Union, L 173, 12.6.2014, p. 65.

underlines the importance of the obligation of State supervision of commercial and operational activities of airports in order to prevent them from taking advantage of their monopolistic position in the market. The privatisation and commercialisation of airports is also conducive to this objective, as it stimulates the growth of air traffic and competitiveness. However, airport restructuring does not affect the equal treatment of all airport users. States may perform their economic oversight function through legislation or rule-making, establishment of a regulatory mechanism etc. The choice of the type of supervision shall depend on the level of competition on the market, the legislative and administrative conditions in the country concerned and the costs involved. Where the management of airports is carried out by public bodies, it is necessary to separate the management and supervisory functions.

The ICAO underlines the need for appropriate financial management and revenue and cost accounting by airports. All revenues and costs should be transparently and easily identifiable, i.e. the type of services they cover including both aeronautical and non-aeronautical services. The need to ensure transparency of financial settlements also applies to public funding for airport operations, as well as funding from other airports operating under a single common system. The document shows that sound financial management is not possible without financial control, which should be carried out in three stages. In the first stage, the revenue generated and the costs incurred should be compared with the planned revenue and costs. If there are significant differences, it is necessary to identify their causes at a later stage. It is important to determine whether the differences between the budget and implementation are due to a miscalculated budget, errors in airport management or external factors beyond the control of the managing body. The final stage of financial control is the identification of corrective measures to avoid similar discrepancies in subsequent accounting periods.

ICAO Doc 9562 provides a detailed description of the process of setting airport charges, specifying the types of revenues and costs associated with airport operations. Revenues from the provision of air services have been allocated according to their origin into aeronautical and non-aeronautical revenues. The first category of revenue includes the aforementioned types of charges (landing charges, parking charges, passenger charges, security charges, noise charges, and emissions charges), as well as ground service charges⁶ and other aeronautical-related charges⁷. On the other hand, the revenues of an airport from non-aeronautical activities consist of various types of fees paid by entities conducting economic activities in the airport area. These include charges related to activities covered by the concession for the distribution of propellant and lubricants to aircraft, charges for contracts with various economic operators at the airport (catering services, duty-free shops, vehicle parking lots, leasing space and equipment owned by the airport operator) as well as bank and grant income and other charges related to activities outside the airport.

⁶ Charges related to the use of airport infrastructure for the ground handling of aircraft or ground handling services provided by airports to aircraft users.

⁷ Fees for other services or provision of other elements of airport infrastructure for air operations.

In line with the ICAO Council's recommendations, two types of costs should be taken into account in the calculation of airport charges: operational and financial. Operational costs include salaries and personnel costs, consumption of materials related to the maintenance of airport infrastructure and the provision of services, costs of third-party services provided to the airport and taxes and fees such as stamp and administrative, notary, court, vehicle, property, and non-deductible goods and services taxes. Financial expenses include: depreciation of fixed assets due to their use, depreciation of intangible assets (e.g. trademarks, brands, and copyrights) and costs related to the use of foreign capital by the airport.

The determination of the cost bases for airport charges is carried out in several stages. First, the full costs of airport operations are determined. If an airport operates as a department of the civil aviation authority, the costs related to the services provided to the airport users should be properly separated. Similarly, depreciation and amortisation costs and costs of using borrowed capital should be identified and allocated to the handling of aircraft, passengers and freight accordingly. Costs that are not related to those services or to activities outside the airport should be separated and deducted from the total costs. The costs of handling traffic exempt from airport charges should also be determined and deducted. The costs so calculated constitute the cost base for charging for services related to the operation of aircraft and the processing of passengers and cargo, and for non-airline services.

The next step is to determine the so-called cost centres, which are assigned to larger groups defining the service lines. On this basis, it is possible to calculate cost bases for individual aspects of airport charges. The scope of establishing cost centres depends mainly on the size of an airport and its organisational structure. The statements of cost centres shall enable the managing body to monitor the activities of the airport according to different functions. Cost centres can be: administration and finance; maintenance of airport infrastructure (which can be divided into an airport part, a terminal and a public part); heating and air conditioning; rescue and fire protection; marketing; technical maintenance; security; terminal management and others. The service division shall indicate the place of supply of services by the airport to its users. It can be the airside, passenger processing, property rental and others. Costs in some cost centres can be subdivided into different service areas and used as a basis for cost bases for different types of airport charges. For example, the use of the service part of an airport is charged a landing and parking charge, and the cost centres are the cost centres: maintenance of the aviation part of the infrastructure, security, and rescue and fire protection.

In conclusion, the ICAO's policy on airport charges is rooted in Article 15 of the Convention on International Civil Aviation. The recommendations made in Doc 9082 and Doc 9562 provide guidance to Member States for regulating airport charges, taking into account four key principles: non-discrimination, cost-relatedness, transparency and consultation of airport users. The principles and recommendations adopted by the ICAO Council have made it possible to harmonise the rules on airport charges at regional (EU) and national level.

Regulation of airport charges in EU aviation law

In EU legislation, airports remain the least regulated part of the aviation chain⁸. This also applies to the establishment of airport charges, which are regulated by a single legal act, Directive 2009/12/EC of the European Parliament and of the Council⁹. It provides general guidance in this respect, but only applies to airports with more than 5 million passengers per year and the airport with the highest passenger movement in each Member State. The preamble to the Directive underlines the need for a common regulatory framework for the way airport charges are set at Community airports in order to ensure a proper relationship between airport managing bodies and airport users. It reserves the right for Member States to decide whether to take account of the nature and extent of the commercial revenue generated by an airport when setting airport charges. It also stresses the importance of the principle of linking airport charges to the costs of providing services, the transparency of the way in which they are set and the non-discrimination between airport users. In the case of airport managing bodies, the possibility of introducing airport charges adapted to a differentiated standard of infrastructure or level of service is provided for, justified by the economic interest of carriers.

Article 1 of the Directive requires Member States to publish a list of airports in their territory to which the Directive applies and to update it annually. Paragraph 5 of this Article reaffirms the right of each Member State to apply additional regulatory measures compatible with Community law in respect of airport operators on its territory. It was pointed out that these could be economic oversight measures such as the approval of charging schemes or the level of charges, including charging methods based on incentive schemes, or the setting of a maximum price level. Article 3 of the Directive on the application of the principle of non-discrimination provides for the possibility of modulating airport charges for reasons of public and general interest, including environmental considerations, using transparent and objective criteria. The Directive also provides for the possibility to differentiate services according to quality, scope and cost or other objective criteria and to introduce common charging schemes for airport networks (Article 4) as well as for airports serving the same city or conurbation (Article 5).

⁸ In addition to the regulation of airport charges discussed here, only four pieces of legislation regulate airport operations within the EU: Regulation EC 95/93 on common rules for the allocation of slots at Community airports, Council Directive 96/67 on access to the ground handling market at Community airports, Regulation (EC) No 1107/2006 of the European Parliament and of the Council concerning the rights of disabled persons when travelling by air and Commission Regulation (EU) No 139/2014 laying down requirements and administrative procedures for airports. By way of comparison, issues of air traffic management and the provision of air navigation services (ATM/ANS) are regulated in 6 regulations of the European Parliament and the Council and 43 implementing regulations of the Commission. Legal status at 31.07.2019.

⁹ Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges, OJ of the EU L 70, 14.3.2009, p. 1.

In Article 6, the EU legislator indicates that one way of preventing discrimination and ensuring transparency of the charging schemes used is for the airport managing body to consult airport users at least once a year. Prior to such consultation, the port manager is required to provide users with a wide range of information, as specified in Article 7 of the Directive. These should include a list of services and infrastructure elements made available in return for the airport charge levied; the method for setting airport charges; the general cost structure with regard to the facilities and services to which airport charges relate; and the projected results of the main envisaged investments in terms of their impact on airport capacity.

The requirement to provide information shall also apply to air carriers which, prior to the consultation, shall provide the managing body with information on traffic forecasts; the intended use of their fleet of aircraft; their development projects at the airport concerned; and their requirements at the airport concerned. During the consultation period, the parties should discuss any proposed changes to the calculation or level of charges to be notified to users no later than four months before the agreed consultation period. Two months before changes to airport charges come into force, the managing body shall publish its decision, which, in the absence of agreement between the managing body and users, it shall give reasons for. In the event of a dispute over airport charges, either party may appeal to the independent supervisory authority (Article 6(3)).

In order to ensure the effective application of the Directive, Article 11 requires each Member State to establish a supervisory authority. This authority is to be legally and administratively independent from airport operators and air carriers in order to eliminate restrictive practices. In particular, this requirement applies to Member States that have ownership of airports. Since the Directive only binds States to the aim, Article 13 requires States to transpose the provisions of the Directive into their legal systems by means of national regulations by 15 March 2011 and to notify the Commission thereof without delay.

The analysis of the provisions of Directive 2009/12/EC shows that they are essentially an implementation of the ICAO recommendations that were included in the two documents - Doc 9082 and Doc 9562 discussed above. They were thus given legal force in the EU Member States. In line with ICAO policy, the publicly announced system of airport charges is based on the number of passengers and the weight of the aircraft. However, as a result of the development of cooperation between airports and airlines, a number of commercial practices have gradually developed long-term agreements providing for differentiated tariffs and financial support through different incentives offered by airports or local authorities to airlines. When granting State aid to airports, this may lead to distortions of competition in air transport markets¹⁰.

¹⁰ See: Communication from the Commission - *Guidelines on State aid to airports and airlines*, OJ of the EU, C 99 of 2014, p. 3.

Regulation of airport charges in Polish aviation law

Provisions concerning airport charges in national law are contained in the Act of 3 July 2002 - Aviation Law¹¹ and the regulation of the minister in charge of transport of 2014¹². Pursuant to Article 21 of the Aviation Law Act, the President of the Civil Aviation Authority (CAA) is the national authority supervising the proper implementation of the provisions on airport charges. The legal framework for the regulation of airport charges is set out in Articles 75-78 in Chapter 2 of the Act on the operation of airports. Article 75 indicates that the airport operator may charge airport charges for the use of facilities, equipment or services provided exclusively by the airport operator for the take-off, landing, lighting, parking of aircraft or handling of cargo or passengers, as well as at public use airports with noise problems – a noise charge. However, airport charges shall not cover services related to the handling of disabled passengers and passengers with reduced mobility¹³ and ground handling services, the use of airport facilities, space and centralised infrastructure. In Article 76, the legislator has identified exemptions from airport charges. These include entities performing public interest tasks related to the prevention or remedying of natural disasters, saving lives and human health; flights performed for the purpose of protecting borders, ensuring the security of the State or public government; and entities operating flights exclusively for the transport of very important persons (VIP) in the State. In any case, these flights must be substantiated by an appropriate status (e.g. HEAD, STATE, HOSP, and SAR) or an appropriate remark in the ATC flight plan¹⁴.

Article 77(2) of the Act also sets out how airport managers are to establish airport charges. It is based on airport consultations with the entities authorised to do so, i.e. any carrier using the airport continuously during the scheduling season or which has notified its intention to operate an air service during the season preceding that in which the consultations are held. The purpose of consultations conducted by airport managing bodies under the Act is to provide information on the draft airport charges, which should include the costs that constitute these charges, the amount of standard, additional, discount and rebate charges and detailed rules for their calculation and collection. Furthermore, through consultations, the managing body shall obtain and respond to users' comments on the submitted project for approval by the President of the CAA three months in advance in accordance with the provisions of the Act.

¹¹ Journal of Laws of 2019, item 235.

¹² Regulation of the Minister of Infrastructure and Development of 8 August 2014 on airport charges, Journal of Laws of 2014, item 1074.

¹³ As referred to in Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air, OJ of the EU, L 204, 26.7.2006, p. 1.

¹⁴ The ATC flight plan shall be prepared in accordance with the guidance document *Air Navigation Services Procedures - Air Traffic Management* (PANS-ATM, ICAO Doc 4444).

It is important that the Act allows the creation of committees of airport users which can represent their interests in matters such as the conditions of use of airports, the setting of airport charges and access to ground handling services.

It is worth noting the provision of Article 77e of the Aviation Law Act, which establishes the necessity for the airport managing body to start negotiations with users, is to lead to the conclusion of an agreement on the quality of services provided, including the amount of fees. However, this provision is imprecise as it only refers to the commencement of negotiations without specifying the date by which the negotiations are to be completed.

The Act differentiates between airports with 5 million and more passengers and airports with fewer than 5 million passengers per year. As regards the regulation of airport charges at airports with more than 5 million passengers, the Polish legislation must take into account the provisions of the Directive 2009/12/EC. On the other hand, the regulation of airport charges at airports with fewer passengers is only interpreted by national legislation.

Another act of the national aviation law – the Regulation on airport charges – specifies in detail the conditions, manner and mode of conducting consultations, requirements for determining the tariff of airport charges and the mode of its approval and publication. Paragraph 2 of the Regulation lists the types of airport charges that the airport operator of a public use airport may set in the tariff for standard services related to the provision and maintenance of airport facilities and facilities. These entail:

- Take-off and/or landing charges – charged for take-off and landing separately for each operation or in combination;
- Passenger charges – collected for departing, arriving and transit passengers;
- Parking charges – collected for providing access to aprons or space in hangars belonging to airports;
- Cargo charges – levied for the provision of cargo handling infrastructure;
- Noise charges (or surcharges) – charged on the basis of the noise level of the aircraft and linked to the landing;
- Security charges – levied on security services and screening of passengers and their baggage and/or cargo;
- Aircraft security charges – levied for the security of an aircraft when it is stationary;
- Additional charges – not included above, related to ensuring safe and efficient operation of the airport using its infrastructure.

With regard to the way airport charges are set at airports of public use, the Regulation takes into account the requirements of transparency, non-discrimination between aircraft users and the basing of charges on actual costs as recommended by the ICAO. In addition, the national legislator recommends the need to take into account their stability during the scheduling season as well as the commercial objective of the airport operator and the related need to maintain the infrastructure. An important provision in the regulation is the requirement to set charges at airports of public use in Polish zloty.

Much of the regulation refers to individual airport charges and the costs that can be taken into account in the calculation of each airport charge. Since the cost type and the calculation bases assigned to each charge do not differ from those discussed above, their specification will be omitted at this point. Meanwhile, the nature of the costs and the calculation bases assigned to the individual charges do not differ from those discussed above, and their specification will also be omitted here. It should be noted, however, that paragraph 5 stipulates that in the case of an airport with a public use plan for the following year, the calculation of airport charges shall take into account the projected value of costs from the business plan or, where there is no business plan, the value of costs from the year preceding the year in which the charges were introduced. While in the first case, the acceptance of the forecast costs is clear, the need to base the charges on the costs of the previous year limits the flexibility of the airport managing body to set the airport charges. It should be noted that the earliest date for the introduction of new charges in the latter case is the end of the year, as the costs of the previous year for the airport managing body can only be obtained after the closure of the annual balance sheet. This process usually takes several months, followed by a four-month consultation process, as well as the need to clarify and document the concerns of the President of the CAA. Thus, the costs included in the charges may not be in line with the actual market situation of the airport managing body. The rules are also imprecise as to the year for which the volume of traffic should be taken into account for the calculation of the unit cost of the individual airport charges. The question is whether to take into account the number of operations and the number of passengers for the year preceding the year in which the charges are introduced, as in the case of costs, or the traffic forecast for the year in which the charges are to be introduced.

It is also worth quoting the provision of paragraph 6 of the Regulation under discussion here. It establishes that the airport operator of a public use airport shall include the costs it incurs in providing the services for which airport charges are levied in the airport charges. They include: direct operating costs of airport maintenance and operation; indirect costs (including administrative costs); infrastructure costs (including depreciation and fixed assets under construction); and financial costs of borrowed capital. In addition, when setting airport charges, the airport operator of a public use airport may take into account the cost of equity determined on the basis of the risk-free component.

With reference to the provisions of the Aviation Law Act concerning the distinction between airports in terms of the volume of air traffic handled during the year, the regulation in paragraph 16 differentiates the requirements for the approval of airport charges by the President of the CAA. The managing body of a public-use airport, which handles more than 5 million passengers a year¹⁵, shall submit the tariff of airport charges or the change of the tariff of airport charges, together with their justification, to the President of the CAA for approval. The scope of information that

¹⁵ Referred to in Article 77c paragraph 1 of the Act of 3 July 2002 – *Aviation Law*.

should be included in it is specified in paragraph 17(1). The operator of a public-use airport that handles fewer than 5 million passengers per year has lower requirements for approval and introduction of airport charges, which puts these airports in a privileged position.

Following the decision of the President of the Polish CAA to approve the tariff of airport charges, it was published in the Official Journal of the Civil Aviation Office and in the Aeronautical Information Publication (AIP Poland)¹⁶, which is part of the Integrated Aviation Information Package.

In the context of using airport charges as an instrument to maintain or improve market power, it is worth noting that the Regulation provides airport managing bodies with tools that can be used to implement their own business strategies and policies for the development of the airport concerned. Namely, pursuant to paragraph 4(2), the airport managing body, while observing the principles of non-discrimination between aircraft users and transparency, may grant discounts on established airport charges, in particular in order to maintain or increase the volume of air traffic, the number of passengers or freight (cargo and mail) handled, the number of air connections or the frequency of existing connections¹⁷. The discounts granted shall not, however, result in an increase in the airport charges borne by those who do not benefit from the discounts. The legislator has, however, stipulated that if the purpose of the discounts granted is to maintain or increase the volume of air traffic, in particular to launch new routes or to increase the frequency of existing routes, they may not apply for more than five years. A further measure to ensure the competitiveness of an airport for the management of a public-use airport is the possibility for the airport operator to set airport charges below the accounting costs set out in the business plan for the year in which the charges are to come into force. This is provided for in paragraph 6(7) of the Regulation. Where the airport operator of a public use airport does not have a business plan, the airport charges are based on costs incurred in the reporting year preceding the year in which the airport charges are introduced (paragraph 5(3)).

In conclusion to the analysis of the national legal framework for airport charges, it should be noted that it takes into account the standards developed by ICAO in this respect as well as being in line with EU aviation law. For airports with fewer than 5 million passengers per year, the requirements for the calculation of airport charges are less restrictive, allowing the managing bodies of these airports more flexibility in their commercial operations. Certain uncertainties related to the imprecision of some

¹⁶ See part EP_GEN 4.1.

¹⁷ The system of volume discounts on landing charges and passenger charges is controversial among carriers. These discounts are most often used by low-tariff carriers, such as Ryanair and Wizz Air, and much less by carriers described as traditional, such as LOT Polish Airlines, Lufthansa, Air France and others. The opposite is the case with lower charges or discounts on transfer passenger charges for traditional carriers.

provisions (e.g. regarding the period for which costs should be taken into account when calculating airport charges) indicate that they need to be revised in order to ensure the competitive functioning of the aviation market for all operators.

Conclusions

The analysis concludes that many factors have a significant impact on the economic situation of airports. These include the increase in the number of new air carriers due to the liberalisation of air transport in the EU and the resulting increased competition in the air services market, changes in the approach to airport financing and, above all, the need for costly investments in infrastructure development, capacity management and environmental issues. Airport managing bodies shall collect airport charges to cover the costs incurred in providing facilities, installations and services which enable air carriers to operate. In addition to airport charges, the profitability of an airport is also affected by revenues stemming from non-aeronautical activities. In a context of dynamic growth of air traffic and decreasing airport capacity, the airport charges system becomes an effective tool for maintaining or improving adequate levels of airport revenues.

The regulatory framework for setting these charges is intended to ensure that the activities of both airport and air transport market players are economically efficient. However, the provisions on airport charges, despite a number of detailed standards, allow airport managing bodies a high degree of flexibility in the calculation of airport charges. As a result, airports, taking advantage of existing market situations or monopoly position, often create charging systems tailored to the main carriers generating the most traffic, which discriminates against smaller airlines. If there is a strong demand for air transport at an airport, these airlines do, however, accept the terms of use offered. In order to increase their competitive position on the market, airports also offer various incentives to airlines, in addition to the officially available price list for airport charges. This can lead to abuses and can be used to compete between airports or to increase the profits made by airports at the expense of the airlines operating at them. With a view to ensuring harmonious cooperation between air carriers and airports, it is necessary to respect the principle of equal treatment of all airport users when establishing airport charges systems. At the same time, the role of regulators should be limited to guaranteeing conditions of fair and undistorted competition for the benefit of air travellers.

References

- Act of 3 July 2002 - *Aviation Law*, Journal of Laws of 2019, item 235.
- Airport Economics Manual*, ICAO Doc 9562, ed. 3, Montreal 2013.
- Commission Regulation (EU) No 139/2014 of 12 February 2014 laying down requirements and administrative procedures for aerodromes pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council, Official Journal of the European Union, L 44, 14.2.2014, p. 1.
- Communication from the Commission - *Guidelines on State aid to airports and airlines*, OJ of the EU, C 99 of 2014, p. 3.
- Convention on International Civil Aviation, Journal of Laws of 26 June 1959, No. 35, item 212, as amended.
- Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges, Official Journal of the European Union, L 70, 14.3.2009, p. 11.
- ICAO's Policies on Charges for Airports and Air Navigation Services*, ICAO Doc 9082, ed. 9, Montreal 2012.
- Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air, Official Journal of the European Union L 204 of 26.7.2006, p. 1.
- Regulation of the Minister of Infrastructure and Development of 8 August 2014 on airport charges, Journal of Laws of 2014, item 1074.