

Title: Airport Charges Directive Lead department or agency: Department for Transport Other departments or agencies: Civil Aviation Authority (CAA)	Impact Assessment (IA)
	IA No: DFT00057
	Date: 11/02/2011
	Stage: Final
	Source of intervention: EU
	Type of measure: Secondary legislation
	Contact for enquiries: phil.cotterell@dft.gsi.gov.uk 020 7944 8706

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

The view of the European Commission is that there is a lack of transparency between airport operators and airlines on how airport charges should be calculated and what components should be taken into account in their determination. It notes that most Member States do not possess legislation which regulates airport charges to the satisfaction of both parties, and that disparate charging systems have resulted. The UK is a notable exception in having regulation in place that has been to the general benefit of airports and airlines. This was noted in the European Commission Impact Assessment that stated that 'the UK is one of the few cases where legislation is in place to regulate airport charges to the general satisfaction of both airports and airlines even if disagreements on details persist

What are the policy objectives and the intended effects?

The policy objective is to apply a common framework on airports with over 5 million passengers per annum (mppa) regulating the essential features of airport charges and the way they are set. It will nominate an independent supervisory authority to ensure correct implementation. We intend to transpose this in a light touch manner taking a "copy-out" approach where appropriate. In 2011 nine airports will need to comply with these regulations due to them having over 5mppa in 2009, rising to ten airports in 2012 - see Annex 3. Three of these airports (Heathrow, Gatwick and Stansted) are already regulated for price control and it is not envisaged any more will be price controlled through the introduction of this Directive.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Three options have been considered:

Do nothing. This is not considered to be a realistic option as this is a European Directive which we need to transpose under the Lisbon Treaty, infraction proceedings can be started by the Commission and any fines levied will be the responsibility of the Department for Transport. This is the baseline against which other options are considered.

Option 1: Amend Section 40 of the 1986 Airport Act through a Statutory Instrument, with the Independent Supervisory Authority conducting reviews upon request. Preferred option as the net benefits of this option are likely to exceed those of Option 2.

Option 2: Same as Option 1 but Independent Supervisory Authority to conduct reviews on a regular basis. This will increase the cost with no additional benefits compared to Option 1.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 03/2016

What is the basis for this review? Sunset clause. **If applicable, set sunset clause date:** 03/2016

Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?

Not applicable

Ministerial Sign-off For final proposal stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister:



Date: 18 October 2011

Summary: Analysis and Evidence

Policy Option 1

Description:

The EU ACD will be transposed into UK law through a Statutory Instrument. Independent Supervisory Authority to investigate whether an airport is subject to effective competition upon request.

Price Base Year 2010	PV Base Year 2010	Time Period Years 11	Net Benefit (Present Value (PV)) (£m)		
			Low: -£1.990	High: -£1.279	Best Estimate: -£1.635

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£0.240	£0.112	£1.279
High	£0.240	£0.193	£1.990
Best Estimate	£0.240	£0.152	£1.635

Description and scale of key monetised costs by 'main affected groups'

1. The Independent Supervisory Authority investigating upon request whether an airport is subject to effective competition.
2. Developing guidance on procedures and policies to work with industry to help assure compliance.
3. Monitoring industry to ensure correct compliance with the Directive and publishing annual report.
4. Airports consulting with airlines

Other key non-monetised costs by 'main affected groups'

None.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	NQ	NQ	NQ
High	NQ	NQ	NQ
Best Estimate	0	0	0

Description and scale of key monetised benefits by 'main affected groups'

None.

Other key non-monetised benefits by 'main affected groups'

None.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5%
<p>Lower band By 2021 12 airports qualify for the ACD, but 3 still covered by airport economic regulation (AER), therefore 9 could be reviewed under the ACD. We have assumed 3 reviews (2 small and 1 large) undertaken in the first 10 years, we shall front load these.</p> <p>Upper band By 2021 16 airports qualify for the ACD, but only 1 still covered by AER (2 have been de-designated), therefore 15 could be reviewed under the ACD. We have assumed 15 reviews (12 small and 3 large) undertaken in the first 10 years, we shall front load these.</p>		

Direct impact on business (Equivalent Annual) £m):	In scope of OIOO?	Measure qualifies as
Costs: 0	No	NA
Benefits: 0		
Net: 0		

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			United Kingdom		
From what date will the policy be implemented?			10/11/2011		
Which organisation(s) will enforce the policy?			CAA		
What is the annual change in enforcement cost (£m)?			£0.04		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			Yes		
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: none	Non-traded: none	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs: N/A	Benefits: N/A	
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	Micro <1%	< 20 <1%	Small 5%	Medium 10%	Large 85%
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties¹ Statutory Equality Duties Impact Test guidance	No	16
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	17
Small firms Small Firms Impact Test guidance	No	16
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	18
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	18
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	16
Human rights Human Rights Impact Test guidance	No	18
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	17
Sustainable development Sustainable Development Impact Test guidance	No	17

¹ Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence

Policy Option 2

Description:

The EU ACD will be transposed into UK law through a Statutory Instrument. Independent Supervisory Authority to investigate whether an airport is subject to effective competition on a regular basis.

Price Base Year 2010	PV Base Year 2010	Time Period Years 11	Net Benefit (Present Value (PV)) (£m)		
			Low: -£3.515	High: -£1.547	Best Estimate: -£2.531

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£0.240	£0.144	£1.547
High	£0.240	£0.361	£3.515
Best Estimate	£0.240	£0.252	£2.531

Description and scale of key monetised costs by 'main affected groups'

1. The Independent Supervisory Authority investigating upon request whether an airport is subject to effective competition.
2. Developing guidance on procedures and policies to work with industry to help assure compliance.
3. Monitoring industry to ensure correct compliance with the Directive and publishing annual report.
4. Airports consulting with airlines

Other key non-monetised costs by 'main affected groups'

None.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	NQ	NQ	NQ
High	NQ	NQ	NQ
Best Estimate	NQ	NQ	NQ

Description and scale of key monetised benefits by 'main affected groups'

None.

Other key non-monetised benefits by 'main affected groups'

None.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

Lower band

By 2021 12 airports qualify for the ACD, but 3 still covered by AER, therefore 9 to be reviewed under the ACD on a regular basis (every ten years). We have assumed 9 reviews (7 small and 2 large) undertaken in the first 10 years, these will be spread evenly.

Upper band

By 2021 16 airports qualify for the ACD, but only 1 still covered by AER, (2 have been de-designated) therefore 15 to be reviewed under the ACD on a regular basis (every five years). We have assumed 26 reviews (22 small and 4 large) undertaken in the first 10 years, these will be spread evenly.

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	No	NA

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			United Kingdom		
From what date will the policy be implemented?			10/11/2011		
Which organisation(s) will enforce the policy?			CAA		
What is the annual change in enforcement cost (£m)?			£0.04 million		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			Yes		
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: None	Non-traded: None	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs: N/A	Benefits: N/A	
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	Micro <1%	< 20 <1%	Small 5%	Medium 10%	Large 85%
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

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Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	16
Human rights Human Rights Impact Test guidance	No	18
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	17
Sustainable development Sustainable Development Impact Test guidance	No	17

¹ Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessments of earlier stages (e.g. Consultation, Final, Enactment) and those of the matching IN or OUTs measures.

No.	Legislation or publication
1	http://www.dft.gov.uk/pgr/aviation/airports/airportcharges/fullimpactassessment.pdf
2	http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:070:0011:0016:EN:PDF
3	
4	

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs	0.1	0.1	0.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Annual recurring cost	0.0	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2
Total annual costs	0.1	0.3	0.3	0.2	0.2	0.2	0.2	0.2	0.2	0.2
Transition benefits										
Annual recurring benefits										
Total annual benefits										

* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office
Excel Worksheet

Evidence Base (for summary sheets)

The problem under consideration

1. Some airports in the European Union may have a dominant position in regional and national markets that is not constrained by competition from other airports. The absence of effective competition may result in these airports charging higher prices, undertaking insufficient investment or providing a low quality of service.
2. A variety of differing ownership and regulatory structures have evolved across the European Union to address this problem. In addition, airport charges are subject to international regulation by the International Civil Aviation Organisation (ICAO). However, the European Commission has concluded that these differing national regulatory systems are not always effective and that a common EU regulatory framework would improve on existing outcomes in some national markets.
3. The UK is one of the few member states where legislation is in place to regulate airport charges along with proposals to update it.
4. UK airports currently fall under three forms of regulation. The first is airports with annual turnover, measured in the previous three years, of less than £1 million. These airports are not subject to any sector-specific economic regulation. Secondly airports with turnover in excess of £1 million, for two out of the previous three years, require permission to levy airport charges. These airports are required to submit financial information to the CAA. In addition the CAA has powers to attach conditions to remedy or prevent certain courses of conduct but these airports face no active regulation of their airport charges. There are currently over 50 airports subject to this regulation. This though is little more than an industry-specific version of general competition law.
5. Thirdly airports can be designated by the Secretary of State for price cap regulation under section 40(1) of the Airports Act 1986 if they are found to have substantial market power. Currently the three largest UK airports are 'designated' for detailed price control (Heathrow, Gatwick and Stansted). At these airports the CAA sets a price cap to limit the amount that can be levied by way of airport charges for a five year period.
6. The fourth largest UK airport, Manchester, is not designated for price control, but has been up until 2008, when the CAA carried out a review and advised the Secretary of State that it did not have substantial market power. This advice was taken and the Secretary of State concluded that there was no need to regulate.
7. Since 1986 the CAA has considered 11 instances where airlines thought an airport was potentially acting uncompetitively. These cases have been resolved without CAA having to use its powers to impose remedies on airport operators. Therefore the UK Government believes that this Directive will add very little benefits to the UK because market competition and existing and planned changes to economic regulation of airports within the UK adequately deal with the risk of abuse of market power of airports.

Rationale for intervention

8. The current variety in airport charging systems across the EU reflects differences in the structure, ownership, conduct and regulation of the industry which may lead to a less than optimal outcome.

Market structure

9. Airports compete in differing geographic and product markets. Competition between airports is particularly evident for charter, short haul and off peak services where spare capacity exists at neighbouring airports. However, at the larger hub airports competition from rival regional airports

may be less effective because capacity at the alternative airports is limited, full service network airlines may face high cost barriers to switching services between airports, and some passengers may in any case be reluctant to use a secondary airport.

Airport ownership

10. The absence of effective market competition may be compounded by common ownership of airports by a single organisation. In addition, many EU airports are operated by public bodies which may not have wholly commercial objectives.

Regulatory frameworks

11. Four main forms of economic regulation of airports exist in the European Union:

- Ministerial approval: the simplest least transparent form of economic regulation is where the airport operator submits its proposed changes to airport charges to the relevant government departments for ministerial approval
- Rate of return regulation is where aeronautical charges are set with direct reference to the costs incurred by the airport in providing aeronautical services
- Price cap regulation sets the level and/or rate of increase of airport charges
- Conduct regulation encourages direct negotiations between airports and airlines on charges, service levels and investment, with regulators retaining reserve powers to impose price regulation if negotiations are not successful.

Charges and airport financing

12. European airports are increasingly operated as stand-alone businesses with the objective of full cost recovery at larger airports. However, at many airports within the EU, airport charges currently do not fully recover infrastructure costs either for historic reasons, to attract new business, or because of government regulation.

Differentiation of charges

13. In general differentiation in charges is common. Although most airports use common denominators such as aircraft weight, the way in which charges are differentiated varies significantly across the European Union.

Conclusions

14. There is no common charging framework across the European Union. Capacity constraints at major airports and high financial and environmental barriers to new entrants restrict competition in the market such that most European countries have in response adopted public ownership or some form of economic regulation of airport charges.
15. The European Commission concludes in its impact assessment that the UK is one of the few cases where legislation is in place to regulate airport charges to the general satisfaction of both airports and airlines even if disagreements on details persist.
16. The European Commission has not identified airports where significant market failure exists and it has been unable to quantify the scale of the market failure with respect to regulation of airport charges.

Policy objectives

17. The ACD proposes 'to establish a common framework regulating the essential feature of airport charges and the way they are set.' The Directive will apply to all airports with more than 5 million passengers per annum.
18. The Directive establishes the following fundamental principles:
 - **Non-Discrimination (Article 3)** – A charging system must not discriminate among carriers or passengers. However airlines can differentiate their services as long as the criteria for doing so are clear and transparent. Airports can also vary charges on environmental grounds.
 - **Consultation (Article 6.1, 6.2 & 8)** - Airport managing bodies and airport users must carry out a consultation process on a regular basis. This is already in place at a number of UK airports.
 - **Derogation to Remedy (Article 6.5)** – The independent supervisory authority will examine on a regular basis or in response to requests from interested parties, whether such airports are subject to effective competition.
 - **Transparency (Article 7)** - Airport managing bodies must inform airport users what they are being charged for. Airport users must provide traffic forecasts, fleet composition and use, development projects and aeronautical requirements.
 - **Quality Standards (Article 9)** - Airports and their users can negotiate with a view to concluding service level agreements.
 - **Differentiation of Services (Article 10)** - Airports may differentiate charges according to the varying quality and scope of particular services.
 - **Independent Supervisory Authority (Article 11)** – Member States shall nominate or establish an independent authority as their national independent supervisory authority in order to ensure the correct application of the measures taken to comply with the Directive.
19. In transposing the Directive we have taken a “copy-out” approach wherever possible to ensure consistency with Government policy, however where this has not been possible the approach has been to be as light-touch as possible, see paragraphs 21-25 for further information.

Options

20. This public consultation considers two options to allow the transposition in the UK of legislation already agreed at EU level. All options considered are based on the minimum required to implement the Directive in the UK, however it has not been possible to 'copy out' the Directive in all instances.
21. The most noticeable example of this is that we have chosen to take advantage of a carve-out in the Directive which describes the type of price control regime that a Member State must have in order to avoid the application of the (much more interventionist) rules elsewhere in the Directive. But because the carve-out is a description of a rule, rather than a rule itself, we have needed, in transposing the Directive, to do some clarification and to reconcile the proposed arrangements with our existing, generally non-interventionist regime. This clarification is necessary to make the legislation meaningful and has been done in a way which gives effect to the policy of proportionate and targeted regulation.
22. The carve-out requires a mandatory procedure for the independent supervisory authority to investigate upon request whether an airport "has substantial market power". Legal advice is that the UK current regime (an amalgam of section 40 and 41 of the Airports Act 1986 (AA86)) whilst similar is not mandatory or sufficiently clear to constitute valid transposition
23. Therefore we propose to amend Section 40 AA86 to give the CAA powers to undertake a market power investigation when requested by an interested party and, if it finds that an airport has substantial market power, to explain what the "nature and extent of that power" is. The Secretary of State will then have discretion as to whether or not to designate an airport based on the findings of the CAA's investigation
24. We are also proposing to modify some definitions where terms in the Directive have also been equated to corresponding terms in domestic law to avoid regulatory uncertainty and the potential for unintended expansion of our domestic regime.
25. There are also a number of instances where extra words have been added to provide further clarity to the regulations. For example the Directive states that airport users should supply airport managing bodies with 'forecasts as regards traffic'. In the Statutory Instrument we have transposed this as 'forecasts as regards to traffic at the airport.'
26. It should be noted that going beyond the minimum requirements does not impose any additional cost to anyone.

Do nothing

27. Given the requirements of the ACD are set out in a European Directive, the 'do nothing scenario' would lead to the government failing in its legal obligations under the Lisbon Treaty and it could therefore be expected to be subject to infraction proceedings by the European Commission. However, the baseline, or counterfactual, for estimating the incremental costs and benefits of transposing the Directive is a notional "do nothing" scenario.

Option 1: Reviews carried out upon request. This is the preferred option

28. This option would implement the following through a Statutory Instrument:

- Non-Discrimination (Article 3): The charging system must not discriminate among carriers or passengers.

- Consultation (Article 6.1, 6.2 & 8): Airport managing bodies and airport users must carry out a consultation process on a regular basis.
- Conducting Reviews (Derogation to Remedy) (Article 6.5): There is a mandatory procedure under national law whereby the independent supervisory authority determines, in response to requests from interested parties, whether such an airport is subject to effective competition. Whenever warranted on the basis of the review, airport charges or their maximum level are determined or approved by the independent supervisory authority. This will be enacted by amending Section 40 of the Airports Act 1986.
- Transparency (Article 7): Airport managing bodies must inform airport users for what they are being charged, whilst airport users must provide traffic forecasts; fleet composition and use; development projects; and aeronautical requirements.
- Quality Standards (Article 9): Airports and their users can negotiate with a view to concluding service level agreements.
- Differentiation of Services (Article 10): Airports may differentiate charges according to the varying quality and scope of particular services.
- Independent Supervisory Body (Article 11): Such a body will be designated to ensure correct implementation of the ACD and to resolve disputes over airport charges referred to under article 6 where relevant.

Option 2: Same as option 1 except reviews will be done on a regular basis

29. Would be exactly the same as option 1 except under Conducting Reviews (Derogation to Remedy) the Independent Supervisory Authority will be required to undertake a review on a regular basis (either on a 5 or 10 year period).

COSTS

30. Cost estimates have been produced in conjunction with the CAA who are the UK's specialist aviation regulators and will be assigned as the UK's independent supervisory authority for this Directive. They also have experience of undertaking tests of airport dominance.
31. The table below shows the number of airports that have been assumed in year 1 and year 10 to be subject to the ACD.

Number of airports that will have costs attributed to them due to ACD

	Lower Band	Upper Band
Year 1	9	9
Year 10	12	16

32. The assumption for year 1 is based on the published number of airports that is already available above the 5mppa when the Regulations come into force (Appendix 3). Therefore the lower and upper bands are the same.
33. For year 10 the assumption has been made based on the most recent published demand forecasts documented in the 'UK Air Passenger Demand and CO2 Forecasts (Jan, 2009)¹. These figures suggest that 14 airports will be above the 5mppa threshold by 2021 (Appendix 4), therefore low and high scenarios have been assumed around this central estimate.

¹ <http://www.dft.gov.uk/pgr/aviation/atf/co2forecasts09/>

Non-discrimination

34. Non-discrimination between airport users is already an ICAO guideline which the Directive makes mandatory. We not aware of any discrimination on the grounds of nationality or other reasons in the UK, however, this requirement may require UK airports to reveal more information than would otherwise have been the case. In some cases it may restrict commercial negotiations. See the section on Transparency (paragraphs 39-41) for details of the extra costs airports and airlines might face.

Consultation

35. ICAO guidelines recommend consultation between airports and airlines and we believe there is already consultation taking place between all UK airports and airlines covered by the scope of this Directive. Therefore, we conclude the Directive's requirement for mandatory consultation will not generate significant new costs for airports or airlines. See the section on Transparency (paragraphs 47-49) for details of the extra costs airports and airlines might face.

Conducting Reviews (Derogation to Remedy)

36. The Directive requires the independent supervisory authority to undertake reviews on airports with more than 5mppa on a regular basis or in response to a request from an interested party to examine whether they are subject to effective competition. The costs of undertaking such a review would vary depending on how clear cut the case at the airport is, see table below. The external costs are made up of economic consultants, legal review and management oversight. There is some uncertainty surrounding the amount of external costs required, it will depend on the size and difficulty of the review being undertaken, therefore a range of costs have been set out below. The size of the review will depend upon the complexity of the review.

Costs to undertake a review to establish if an airport is subject to effective competition

	Large Review	Small Review
FTE	£80k	£24k
External resources	£150-500k	£0
Total Cost	£230 – £580k	£24k

Source: CAA

37. The intension is to transpose the ACD using Article 6(5) derogation.

(b) "there is a mandatory procedure under national law whereby the independent supervisory authority examines, on a regular basis or in response to requests from interested parties, whether such airports are subject to effective competition. Whenever warranted on the basis of such an examination, the Member State shall decide that the airport charges, or their maximum level, shall be determined or approved by the independent supervisory authority. This decision shall apply for as long as is necessary on the basis of the examination conducted by that authority."

38. The Directive can therefore be transposed to either:

- a system of review which takes place upon response to requests (option 2 in this impact assessment), or

- a system of review where reviews take place on a regular basis (option 3 in this impact assessment).

Option 1

39. The independent supervisory body has an obligation to conduct a **review when asked by an interested party**.
40. It is difficult to judge how many additional reviews would be requested. Due to these uncertainties a range of values has been calculated. Therefore we have assumed:
- **LOWER BAND:** by 2021 12 airports will meet the threshold for the ACD, but 3 will still be designated (same as today), therefore 9 could be reviewed under the ACD. We have assumed 3 reviews (2 small and 1 large) undertaken in the first 10 years. The assumption of 3 is based on discussions with the CAA that suggested there maybe a number of test cases in the early years, but most of these will be small (i.e. not complex) reviews as the three largest airports will continue to be regulated.
 - **UPPER BAND:** by 2021 16 airports meet the threshold for the ACD, but only 1 will still be designated (2 have been de-designated), therefore 15 could be reviewed under the ACD. We have assumed 15 reviews (12 small and 3 large) undertaken in the first 10 years. The assumption here is that the CAA will be asked to review all non-regulated airports and three of them will be large (i.e. complex) reviews as two of the previously regulated airports are no longer regulated.
41. It is also unclear whether these would be requested in all in one go once the Directive was introduced or if they would be more steadily spread out over a ten year period. It has assumed that the reviews will mainly be in the early years and then thin out, as case "law" grows, the initial requests having been made "to test the water" or to get clarity.
42. The table below sets out the average annual cost for these two bands given the assumptions above.

Annual average cost of conducting reviews to establish if an airport is subject to effective competition upon request

	Lower Band	Upper Band
Annual Average Cost	25k	89k

Option 2

43. The independent supervisory body has an **obligation to undertake a review on a regular basis**.
44. This will require reviews to be carried out at airports on regular basis. The table below shows the assumptions made on how regularly a review will be undertaken. We have assumed that for the Upper band the review will be carried out every 5 years. This would therefore be consistent with the current price control periods for airports already designated for price control in the UK. Given the number of airports covered by the regulations it is unlikely the review period could be shorter given the time and resources required to undertake a review.

The number of years that a review will be carried out at an airport

	Lower Band	Upper Band
Review carried out	10	5

45. Due to these uncertainties a range of values has been calculated. Therefore we have assumed:
- **LOWER BAND:** by 2021 12 airports will meet the threshold for the ACD, but 3 will still be designated, therefore 9 will be reviewed under the ACD on a regular basis (every ten years). We have assumed 9 reviews (7 small and 2 large) undertaken in the first 10 years, these will be spread evenly.

- **UPPER BAND:** by 2021 16 airports will meet the threshold for the ACD, but only 1 will still be designated, (2 have been de-designated) therefore 15 will be reviewed under the ACD on a regular basis (every five years). We have assumed 26 reviews (22 small and 4 large) undertaken in the first 10 years, these will be spread evenly.

46. The table below sets out the average annual costs of conducting regular reviews up to 2021. The numbers have been calculated using the cost per reviews provided by the CAA and the assumed number of reviews above.

Annual average cost of conducting reviews to establish if an airport is subject to effective competition on a regular basis

	Lower Band	Upper Band
Annual Average Cost	£57k	£257k

Transparency

47. The Directive requires airports and airlines to submit certain financial and operational information to each other. Airports would provide airlines with financial information relating to the method of calculation of charges and the cost structure of the airport. Airlines would provide information on traffic forecasts and their requirements at airports.
48. This requirement would oblige at least some UK airports to reveal more of their cost structures than is currently the case. It has been estimated that this requirement along with non-discrimination and consultation, will have a small increase in costs for airports.
49. It is difficult to give an accurate forecast of industry costs. However the preparation and dissemination of information and the consultation process itself are not insignificant. It has therefore been estimated that the additional resource to support implementation would be in the region of £8k per airport based on discussions with the CAA. The table gives the lower and upper costs to industry in year 1 and year 10, based on the number airports with 5mppa, it is the same for both Option 1 and 2 as both options assume the same number of airports will need to comply with the Regulations.

Annual average costs to airports and airlines to comply with ACD

	Lower Band	Upper Band
Annual Average Cost	£73k	£87k

Quality Standards

50. Airports and their users can negotiate with a view to concluding service level agreements. This process already occurs therefore no extra costs will be incurred.

Differentiation of Services

51. Airports may differentiate charges according to the varying quality and scope of particular services. This process already occurs therefore no extra costs will be incurred.

Independent Supervisory Body

52. Economic regulation of airports in the UK will be provided by the Civil Aviation Authority (CAA). Apart from conducting reviews it will also be required to publish a list of airports whose annual traffic is over 5mppa, ensure consultation takes place, ensure correct application of the ACD and publish an annual report of activities.
53. The cost to the CAA of providing these services is likely to be higher in the early years as guidance is developed to support procedures and polices and the CAA works closely with industry to ensure compliance. It has been estimated that this will be £80k per annum for the first 3 years. This resource would then be phased out and equilibrium costs would continue in the 10 year projection. This is shown in the table below and is the same for both Option 1 and 2 as both options assume the same number of airports will need to comply with the Regulations.

Annual average cost to the CAA as the Independent Supervisory Body

Period	Lower Band	Upper Band
Annual Average Cost	£36k	£39k

Source: CAA

BENEFITS

54. Any benefits of the Directive will accrue to airlines and their passengers through lower costs and improved quality of service.
55. Competition between UK airports, private ownership, investment in new capacity, and independent economic regulation of airports with market power have been features of the UK market for many years. We believe that the planned changes to national economic regulation of airports within the UK will adequately deal with the risk of abuse of market power by some airports. An equal and level playing field in economic regulation across Europe as a result of the Directive may in future increase the incentive for some European airlines to enter the UK market - although we do not consider this significant given the regulatory structures that are in place already. Therefore, we conclude implementation of the Directive within the UK will not deliver significant benefits.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review: [The basis of the review could be statutory (forming part of the legislation), i.e. a sunset clause or a duty to review, or there could be a political commitment to review (PIR)];</p> <p>All regulatory interventions based on European Directives are kept under review to inform future dealings with the EC, and the European Parliament.</p>
<p>Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p> <p>To ensure the Directive is operating as expected and the policy objectives are being met.</p>
<p>Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p> <p>It is likely to be based on a scan of stakeholder views because this is proportionate to the anticipated scale of costs and benefits in the UK.</p>
<p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]</p> <p>The baseline for the PIR is given by the 'do-nothing' option.</p>
<p>Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p> <p>No direct significant impact on the UK.</p>
<p>Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]</p> <p>Existing data and ongoing stakeholder liason will provide the primary monitoring information. Additional systematic collection of monitored information is not planned.</p>
<p>Reasons for not planning a review: [If there is no plan to do a PIR please provide reasons here]</p> <p>N/A</p>

Annex 2: Specific Impact Test Screening

Small firms

56. The UK airports impacted by this Directive are not small firms. There may however be a number of airport users that are small firms. The Directive requires them to submit information to airport managing bodies before the consultation process starts. This will be enforced by sanctions on those airport users who do not provide the required information to the airport operator.
57. We believe the impact on them will be small as the data requirements are not onerous and any fines imposed will be proportionate to the size of the firm. As a result, we do not believe the reforms should have any material impacts on small firms.

Health and well-being

58. Any health and well-being impacts of the Directive would be closely correlated with changes in local emissions and noise. We conclude these impacts are insignificant. In addition, there will be no impact on wider determinants of health, such as income, crime, housing, education, employment, agriculture or social cohesion.

Statutory equality duties

Race

59. We do not anticipate that these reforms will lead to:
 - Different consequences according to people's racial group
 - People being affected differently according to their racial group in terms of access to a service, or the ability to take advantage of proposed opportunities
 - Discrimination unlawfully, directly or indirectly, against people from some racial groups
 - Different expectations of the policy from some racial groups
 - Harmed relations between certain racial groups, for example because it is seen as favouring a particular group or denying opportunities to another; or
 - Damaged relations between any particular racial group (or groups) and the DfT.

Disability

60. The Disability Discrimination Act (DDA) 1995 now gives rights to disabled people in the area of access to goods, facilities and services. The charges levied for the funding of assistance to disabled passengers and passengers with reduced mobility are governed by 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. The ACD does not impact on any of these rights.

Gender

61. This objective relates to all passengers. Therefore, we do not anticipate that these reforms will lead to:
- Different consequences according to people's gender
 - People being affected differently according to their gender in terms of access to a service, or the ability to take advantage of proposed opportunities
 - Discrimination unlawfully, directly or indirectly, against genders; or
 - Different expectations of the policy from between genders.

Rural proofing

62. We do not believe that the ACD will have a different impact in rural areas.

Competition

63. Heathrow, Gatwick and Stansted airports are price controlled or have maximum prices set by the CAA due to concerns about the extent of their market power. Further, the airports also have minimum service quality standards set by the regulator, following adverse public interest findings by the Competition Commission. The Competition Commission's recent market inquiry into BAA airports in the southeast of England and Lowland Scotland found they were not operating competitively. It made a number of recommendations in relation to market structure and the system of regulation in order to improve competitive outcomes. In particular, it suggested the divestment by BAA of two of its three London airports and of either Glasgow or Edinburgh airport. Further, it suggested a number of reforms to the regulatory regime. BAA has since sold Gatwick Airport.
64. The Government announced in the Queen's Speech its intention to introduce a Bill to reform the regulation of airports to the benefit of passengers.
65. In addition, there is evidence that many other airports in Great Britain do function in a competitive environment. The CAA has carried out two reviews of regional airports and its results indicate that the airports are likely to face strong competitive pressures. In fact, the CAA refers to competition between neighbouring regional airports as being accepted by the industry as a "given".
66. We now assess whether or not the Directive is likely to have a significant impact on competition based on the four tests set out in Office of Fair Trading guidelines on completing competition assessments in impact assessments.

Does the Directive directly limit the number or range of suppliers?

67. The number of UK airports is constrained by the large and irrecoverable investment costs in new infrastructure and by planning constraints to minimise environmental pollution. The ACD does not add additional barriers to entry to the market.

Does the Directive indirectly limit the number or range of suppliers?

68. The imposition of the Directive on the UK's existing competitive and well regulated market could impose additional costs on airport operators and act as a competitive disadvantage, especially for airports with around 5 million passengers per annum not previously subject to direct regulation. However, the additional costs of the Directive on UK airports are insignificant in terms of market entry.

Does the Directive limit the ability of suppliers to compete?

69. The Directive raises the possibility of price regulation and non-discrimination between airport users at UK airports operating above the 5 million passenger threshold that have not previously been subject to intrusive economic regulation. However, as these airports are subject to effective competition we conclude that the Directive will not limit the ability of suppliers to compete.

The Directive will cause a reduction in suppliers' incentives to compete vigorously?

70. The Directive requires airports and airlines to exchange financial information which might otherwise not have been revealed.

Sustainable development

71. Sustainable development entails the current generation satisfying its basic needs and enjoying an improving quality of life without compromising the position of future generations. The proposals do not affect the resources available to future generations, and are therefore compatible with sustainable development.

Greenhouse gas assessment

72. The Airport Charges Directive is not expected to impact the costs of airport use in the UK, therefore, other things being equal, we conclude this will not change airport use and hence there is no direct impact on UK greenhouse gas emissions. However, the Directive may lead to some reduction of costs at airports in some other member states, raising the possibility of increased air services between the UK and these airports. It may also lead to a reconfiguration of existing UK services to serve cheaper airports (low-cost airlines exploit such cost differences) rather than an increase in the number of services. Carbon emissions also depend on the size of aircraft and the distance flown which may also change in response to any impacts of the Directive on costs. We conclude any indirect impact on greenhouse gas emissions is complex and difficult to predict. In any case it is likely to be insignificant relative to other factors such as economic growth and will be caught by emissions trading.

Wider environmental issues

73. As with greenhouse gases, any impacts on local emissions and noise within the UK depend on the indirect impacts of any cost reductions at airports in other member states and the extent to which this leads to increased air traffic and air passenger volumes at UK airports. We conclude any indirect impact on wider environmental issues is likely to be insignificant relative to other factors such as economic growth.

Human rights

74. The proposals include provisions allowing for the imposition of financial penalties for breach of Regulations with regard to the provision of information. Accordingly, these proposals appear to engage fundamental rights to a fair trial (Article 6).
75. The imposition of civil penalties for breach of regulatory requirements is not unusual. The penalties will need to be reasonable. There will be a right of appeal against the making of enforcement orders to the Competition Appeals Tribunal. The appellate body is to be empowered to quash the Order or any part of it, or uphold it. It is intended that the imposition, timing and/or amount of any penalty may be appealed to the General Regulatory Chamber (or, if unavailable, to the High Court). It is

intended that the appellate body will be empowered, inter alia, to quash the penalty or substitute a lesser sum. This will provide appropriate right of access to an independent and impartial tribunal.

Annex 3: Airports with 5 million passengers per annum

Airport	2009 pax	2010 pax
HEATHROW	65,906,641	65,745,250
GATWICK	32,360,773	31,342,263
MANCHESTER	18,630,394	17,662,699
STANSTED	19,949,689	18,561,598
BIRMINGHAM	9,093,201	8,563,505
LUTON	9,115,327	8,733,837
GLASGOW	7,213,397	6,521,765
EDINBURGH	9,043,452	8,594,449
BRISTOL	5,615,200	5,723,182
LIVERPOOL		5,007,944

Source: CAA

Annex 4: Estimated passenger levels at UK airports in 2021

	2021
Total terminal passengers	
Heathrow	82,763,233
Gatwick	37,641,303
Stansted	35,000,000
Manchester	33,808,636
Birmingham	20,257,466
Luton	17,000,000
Edinburgh	14,078,293
Glasgow	12,485,617
Bristol	8,938,693
Newcastle	7,950,544
Belfast International	7,739,862
East Midlands	7,675,486
London City	5,866,222
Liverpool	5,499,554
Aberdeen	4,337,281
Leeds/Bradford	4,277,166
Southampton	4,154,499
Prestwick	3,863,893
Belfast City	3,488,097
Bournemouth	3,025,897

Source: The UK Air Passenger Demand and CO2 Forecasts (Jan, 2009)