Purpose and scope

The working group will provide recommendations: 1) on the range of remedial measures that could be made available to ISAs in seeking to address any kind of market failures, in particular the risk of abuse/misuse of significant market power by airport operators; and 2) on benchmarking airport charges levels.

This work will inform both the ongoing review of the Airport Charges Directive and serve to improve the implementation of the Directive.

The definition of significant market power of this working group corresponds with the principles of EU competition law and rulings of the ECJ.\(^1\)

Airports may exercise market power in a variety of ways. The Airport Charges Directive introduced a general framework for the regulation of EU airports falling within its scope, while leaving Member States some discretion in adapting their national regulatory framework to national circumstances. Consequently, the regulatory frameworks applied to airports vary across Member States. There are a range of different remedial measures commonly applied by airport charge regulators.

The working group shall produce a report on Remedial Measures which will include the following aspects:

- General overview in terms of regulatory issues and solutions adopted by the Member States;
- General principles for \textit{ex-ante} remedial measures, and in what circumstances such measures are required
- Identifying minimum regulatory requirements for all airports
- Advantages and disadvantages of a number of specific remedial measures
- Advantages and disadvantages of greater harmonisation in the application of remedial measures

There are difficulties in effective benchmarking in the airports sector related inter alia to the heterogeneity of EU airports, lack of available data and differing national regulatory frameworks in place. Nevertheless, benchmarking is used by national regulators in assessing an airport’s performance and the level of charges it applies against comparable airports.

The working group shall produce a report on Benchmarking Airport Charges Levels\(^3\) which will include the following aspects:

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\(^1\) Article 102 TFEU

\(^2\) The concept of dominant position is not defined as such in the Treaty but it is established by case law as: "[A] position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by giving it the power to behave to an appreciable extent independently of its competitors, customers and ultimately of its consumers" Case 27/76, United Brands v Commission

\(^3\) The elements listed in the Guidelines on State aid to airports and airlines may be taken into account.
- Criteria to be defined for the choice of the sample airports
- Benchmarking methodology (steps to follow, pitfalls to avoid, availability of data)
- Use of benchmarking to inform the regulatory decisions
- Other aspects of airports that can be benchmarked, beside airport charges levels, but relevant to these

The purpose of this working group is not to investigate whether the remedial measures existing at individual EU airports are effective, or to investigate whether the airport charges levels at specific EU airports are justified.

**Reporting**

The working group should produce two reports, providing recommendations on each of the topics identified above. To fit with the timetable of the ongoing review of the Airport Charges Directive, draft final reports covering the two topics should be finished and made available to the Commission by early November so that the reports can be presented for adoption by the Thessaloniki Forum at a plenary meeting to be held before the end of 2019. First drafts of the reports on the two topics should be finalised by July 2019.

Reports of the working group should be clearly and concisely written in English and will be published on the Register of the Expert Groups of the European Commission.

**Membership and Chairmanship of Group**

The group is made up of members of the Thessaloniki Forum who have volunteered to contribute to its work. The group has appointed a Chair during the first meeting, in the person of Ms Pepi Lykou from the Hellenic Civil Aviation Authority.

**Meetings**

The first meeting of the group will be convened and chaired by the Commission. Further meetings of the group can be convened on the agreement of the Chair of the Group and the Commission. Meetings of the group shall generally be held on Commission premises and be chaired by the Chair appointed by the working group. The Chair will set the agenda for meetings in consultation with the Commission, who will provide secretarial support to the Chair. In all other respects the meetings will conform to the rules of procedure of the Thessaloniki Forum of Airport Charges Regulators.