

Response to Hermes – Air Transport Organisation call for position papers on ownership and control in airlines

(Presented by Civil Air Navigation Organisation - CANSO)

Introduction

CANSO – the Civil Air Navigation Services Organisation – is the global voice of air traffic management (ATM) worldwide. CANSO Members support over 85 percent of world air traffic. Members share information and develop new policies, with the ultimate aim of improving air navigation services (ANS) on the ground and in the air. CANSO represents its Members' views in major regulatory and industry forums, including at ICAO, where it has official Observer status. CANSO has an extensive network of Associate Members drawn from across the aviation industry.

Hermes – Air Transport Organisation has launched a call for position papers on ownership and control of airlines.

CANSO does not believe that it is appropriate for it to comment on ownership and control of airlines, beyond stating that healthy, responsible and well-governed airlines are obviously in the overall interests of the aviation industry and hence to all stakeholders who are part of the aviation value chain or who benefit from the many economic, social and other benefits of aviation.

However, as ATM is an integral part of the aviation value chain, CANSO believes that its position on ownership and control issues for air navigation service providers (ANSPs) and the principles involved may be of interest to Hermes and may help to aid understanding of options for airlines.

Background

Article 1 of the Chicago Convention establishes that “every State has complete and exclusive sovereignty over the airspace above its territory”. States therefore have exclusive competence to exercise their legislative, administrative and judicial powers within their national airspace (over land and over the high seas). BUT States are not obliged to provide air navigation services within their “own” airspace, only that when they choose to do so, those air navigation services must comply with the ICAO (International Civil Aviation Organization) Standards and Recommended Practices (SARPS).

The conventional and generally prolific ‘model’ in ATM is for each State to have its own air navigation services provider but these are operated under a wide range of operational formats. Considering the diverse circumstances involved, ICAO does not recommend one organizational format over another, but rather it provides guidance to States by describing relevant aspects of each format. However, keeping in view the experience gained worldwide, ICAO recommends that governments may wish to explore the possibility of establishing autonomous authorities to operate their air navigation services where this is in the best interests of providers and users.

CANSO believes that ANSPs should be empowered by their States to operate as normal businesses in the delivery of safe, environmentally sustainable, efficient, cost effective and seamless services that are best able to respond to the needs of their stakeholders – in particular their customers. Further, this empowerment will enable ANSPs to employ their choice of vehicles to improve their performance, e.g. enter into agreements with other ANSPs and other industry partners to create regional efficiencies.

While autonomous and commercialized ANSPs have been established in many States around the world, financing is still an issue in other States. It is important to consider the importance of further promotion of ICAO policies on the establishment of autonomous ANSPs, including separation between regulatory and operational functions. Furthermore, States should review the commercialization experiences to date and discuss its influence on the performance of ANSPs, with particular attention to governance and management structures.

CANSO believes strongly in

- Harmonisation of regulations and standards in aviation
- Separation between regulation, oversight and service provision
- A regulatory framework with a performance-based approach
- Governance and business models for ANSPs that are also performance-based to produce the best outcomes for stakeholders, in particular passengers and customers.

Harmonisation of regulation and standards

In order to deliver effective air navigation services, it is important for regulations and standards in aviation to be harmonised. The modernisation of ATM infrastructure requires the right regulatory framework. New technologies such as remote/digitised towers and space-based ADS-B are transforming global ATM performance. A global industry requires global standards that will further help achieve the goal of harmonised airspace worldwide. CANSO is therefore asking ICAO to advise standards organisations that their proposals should follow a standard approach to ensure global interoperability. This will lay the foundations on which a strong regulatory landscape can be built.

Separation between Regulatory and Service Provision Functions

The essential characteristics of a separated function include

- Separate lines of accountability between regulation and service provision
- Different lines of management and operational authority
- Individual control mechanisms within each body.

They may also include:

- Separated funding mechanisms
- Divided resource allocation
- Non-governmental insurance backing
- Removal of service provision budget from public funds
- Shareholder membership of the air navigation service provider.

The successive steps for effective separation are:

- Clearly defined objectives for the service provider
- Clear definition and understanding of roles and responsibilities

- Appropriate governance structures
- Clearly defined coordination processes between the regulator and the service provider
- Separation of budgets and budgetary freedom for the service provider
- Empowerment of service provider management
- Accountability of management.

Performance-based regulation

The ATM industry is often faced with prescriptive, inefficient and conflicting regulations that add cost and undermine the ability to innovate and perform effectively. Regulation must be sufficiently flexible to allow the safe introduction of new technology (e.g. remote towers) as well as new entrants to airspace such as drones. A harmonised and consistent approach to regulation in ATM globally is therefore required.

CANSO is calling for regulatory approaches that emphasise what must actually be achieved, focusing on agreed, measurable outcomes and placing more of the responsibility and accountability with the service provider in how the performance requirements will be met. But there is no ‘one size fits all’ solution for ATM regulation, as there is a great disparity among States in terms of oversight capabilities, maturity and culture.

Therefore CANSO prefers to see an incremental approach

- For States with a well-established (albeit prescriptive) regulatory regime, we encourage the move to performance based regulation (PBR) and the adoption of Better Regulation principles,
- For States that need to improve oversight capabilities, we need first to support the implementation of capacity building initiatives that are both innovative and effective

CANSO is asking States to adopt five key principles of better regulation; regulations should be:

- Proportionate: Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised
- Accountable: Regulators must be able to justify decisions, and be subject to public scrutiny
- Consistent: Government rules and standards must be consistent and coordinated and implemented fairly
- Transparent: Regulators should be open, and keep regulations simple and user-friendly
- Targeted: Regulation should be focused on the problem, and minimise side effects

CONCLUSION

Air navigation services is a service industry, the primary objective of which is to provide safe, secure, efficient and economical services to airlines, passengers and other users. There are several alternative ownership, control and management options for the provision of these services and such options should be considered as means to achieve the end result. Therefore, a State should chose the option which is best suited for its specific circumstances in achieving this primary objective.

CANSO urge States and regulators to separate regulation from service provision and to adopt harmonised and standards together with a performance-based approach. This will truly facilitate improved safety and performance in air traffic management and aviation as a whole. It will also enable regulatory frameworks to keep pace with the increasing pace of change since they will

measure performance rather than chasing the individual technologies, systems and procedures that are used to achieve it.

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