



Regulatory Body for Railway Transport and Brussels Airport Operations

Communication C-2017-01-LA regarding the role of the Regulatory Body during the exceptional consultation process on airport charges with the users at Brussels Airport

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Binding text in French only

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1. Context

1. The present communication must be seen in the context of the tariff consultations for safety and security, in application of the article 45 of the Royal Decree of June 21st 2004 granting the operating license for the Brussels-National Airport (hereinafter called “license” Decree).
2. Article 45 of the “license” Decree stipulates that the airport operator may, during the regulatory 5-year period, review the tariff control formula and the tariff system to compensate the cost of a unilateral imposition of obligations by the public authorities, in particular with regard to safety and security. This consultation is hereinafter called exceptional consultation.
3. In the context of the recent terrorist attacks, several security measures aimed at increasing the level of protection of persons and infrastructure, were imposed on the airport operator.
4. The exceptional consultation with the airlines and their representatives is organized by the license holder (Brussels Airport Company hereinafter called BAC) with the objective to draft a final tariff proposal acceptable for the users (airlines).
5. Article 51, §2 of the “license” Decree stipulates that the Economic Regulatory Authority, i.e. The Regulatory Body for Railway Transport and for Brussels Airport Operation, (hereinafter called Regulatory Authority) could participate at the consultation process as observer.
6. In the past, the Regulatory Authority took the opportunity to clarify its role in the consultation process on airport charges¹.
7. By e-mail of December 19th 2016, the Regulatory Authority was invited by BAC to participate in the exceptional consultation process as observer.
8. On March 30th 2017, the airport operator presented its proposed changes of the tariff system to the participants by not disclosing certain tariff related information for reason of confidential security reasons. This information has however been transmitted to the Regulatory Authority.

¹ Communication C-2015-01-LA of March 4th 2015 regarding the role of the Regulatory Body during the airport charges consultation process with the users at Brussels Airport.

9. At the 2nd meeting on May 3rd 2017, airlines and their representatives had the opportunity to share their questions and comments following the BAC proposal.
10. A next meeting is planned May 29th 2017, for BAC to answer at the questions from participants. Subsequently, the final proposal should be submitted ultimately by July 30th 2017².

2. Request

11. In this context, the airport operator considers that certain data are confidential and therefore cannot be communicated. Consequently, some users have raised the question if contacting the Regulatory Authority directly would be possible in this matter.

3. Analysis and observations

12. The legislator conferred the Regulatory Authority an observer role during the consultation process. This mission must be seen in the light of all its competences, in particular its competence of appeal body.
13. In order not to prejudge to and to preserve its impartiality in the event of appeal by one or more user, the Regulatory Authority considers that its role of observer is passive of nature during the consultations. Therefore, the Regulatory Authority cannot confirm nor invalidate the provided information during the consultation process.
14. For this reason, the Regulatory Authority considers that questions can only be treated in the framework of an appeal procedure as foreseen in article 55 of the "license" Decree.

² Article 52, §1 of the "License" Decree stipulates that "The owner shall initiate the consultation ... not later than fourteen months and fourteen days before the date of entry into force of the revision applied pursuant to Article 45 [...] ". (free translation)

4. Conclusions

Given the above and in the context of the exceptional consultation 2017, the Regulatory Authority:

- **reminds the concerned parties that, at this stage, it exercises a role of observer;**
- **states that the exercise of its appeal competence is not compatible with any active role during the consultation process;**
- **considers that currently, it cannot act upon the requests of the users due to its appeal competence as mentioned in Article 55 of the "license" Decree.**

Brussels, 19th of May 2017.

For the Regulatory Body for Railway Transport and for Brussels Airport Operation,

Serge DRUGMAND,

Director