



**The Consumer
Council**

To: airportcomments@edlb.gov.hk
CC:
Subject: Re: Consultation Document on Partial Privatization of the Airport Authority
 Urgent Return Receipt

05/05/2005 14:42

By fax & email

Our Ref.: CC1/206

Economic Development and Labour Bureau
2/F, Main Wing
Central Government Offices
Lower Albert Road
Central

Dear Sir,

Please find enclosed the Council's views on the Consultation Document on Partial Privatization of the Airport Authority.

Should you have any queries, please feel free to contact Ms. Rosa WONG, Head of Research and Trade Practices Division on 2856 8509 or the undersigned on 2856 8585.

faithfully,

Yours

Mrs. CHAN WONG Shui

Chief Executive

(See attached file: R05010E1.doc)



R05010E1.doc

Consultation on Partial Privatization of the Airport Authority

Consumer Council's Response

1. The Consumer Council (CC) welcomes the opportunity to offer views on some issues on the regulatory and institutional framework pertinent to the proposed partial privatization of the Airport Authority (AA).
2. CC understands that to proceed with the privatization exercise, there are several regulatory issues to be addressed for safeguarding public interest. CC would like to comment on the following matters:
 - a) Relationship between the Government and the new Company
 - b) Economic Regulation
 - c) Competition Safeguards

Relationship between the Government and the new Company

3. It is expected that the new Company will operate as a commercial entity but is not clear from the consultation document whether it will have maximization of profit as a primary or predominant objective. CC is concerned that interest of the consuming public may be affected if the new Company is left very much to operate as a commercial entity accountable to its shareholders for the greatest possible commercial returns. CC therefore supports the setting of legislative provisions to put in place the Government's regulatory powers over the new Company.
4. CC supports the appointment of additional Board members to the new Company to represent public interest. However, CC understands that board members of limited companies owe a fiduciary duty by law to serve the interest of the companies concerned. The proposed appointment of additional members to the Board of the new Company to represent the government/public interests (rather than acting in the best interest of the new Company) would be in conflict with the provisions of the Companies Ordinance. CC suggests that an alternative would be to make promotion of Hong Kong's long term interests as an international airport as one of the new Company's objects in order to safeguard public interest.
5. It is noted that the Consultation Document does not specify whether there would be a regulatory body overseeing the operation of the new Company. Given the monopolistic and strategically important nature of the new Company, the Government should specify clearly what proposals it would make in this regard and it should also be spelt out how the Government proposes to enforce the proposed legislative provisions, for example, by a designated agency and if so the enforcement details.

Economic Regulation

6. CC agrees to the Government proposal that airport charges paid by airlines should be regulated to keep airport charges competitive, since such

charges are likely to have direct impact on consumers who come to use aeronautical services and the regulation of such charges could in turn encourage the new Company to maintain its aeronautical services at high standards.

7. It is noted that some U.K. airport charges are subject to a regulated adjustment mechanism under which the risk-adjusted return on investment, inflation, productivity and the services standards are factors considered. A well-defined price adjustment mechanism will be more transparent to the public and form an objective basis for commercial agreements between the new Company and the airlines.

8. CC invites the Government to take account of the following in considering the regulation of airport charges:

- Airport charges are charges imposed on airlines rather than directly on consumers and they may not necessarily be passed on to consumers. Increase in airport charges could result in airlines cutting back on their routes stopping at Hong Kong, hence affecting consumers' choice and convenience.
- Any price regulation would affect not only local consumers but also overseas users of the airport. There may be a concern about whether price regulation would result in subsidization of overseas users by local consumers.

9. CC accepts that the exclusion of commercial revenues from the regulatory framework could offer more incentive for the new Company to explore commercial opportunities but would invite the Government to consider the necessity of some sort of oversight such as by reserving the power to inspect books and accounts in specified circumstances.

10. CC supports requiring the new Company to draw up a set of service standards on the basis of which a financial reward and penalty system should be devised.

Competition Safeguards

11. CC welcomes the Government's proposal of imposition of statutory provisions prohibiting the new Company from engaging in conduct which has the purpose or effect of preventing or substantially restricting competition in relation to its land use and scope of business.

12. CC understands that currently AA has in place measures to ensure that consumers using HKIA will not be prejudiced as a result of patronizing shops licensed to operate by AA, such as requiring shops to guarantee that they are offering goods and services at the same price as at outlets not within HKIA. With the new Company operating as a commercial entity, CC hopes to see that such measures will be maintained to prevent the new Company from abusing its monopoly position to raise charges and fees concerning rental of its premises and facilities which will in turn be passed on to consumers.

13. In view of the monopoly of the new Company in the aeronautical services market, CC considers it desirable to have explicit criterion and legal

provisions in place to determine the new Company's dominance in the relevant market in order to prevent the new Company from using its dominant position in the aeronautical services market to gain an unfair advantage in other markets.

14. Until such time as Hong Kong has a Competition Authority able to act across industry boundaries, the provisions should serve to prevent the new Company from abusing its dominant position in the aeronautical services market to extend into other sectors such as warehouse services.