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DIRECTORATE FOR FINANCIAL, FISCAL AND ENTERPRISE AFFAIRS
COMMITTEE ON COMPETITION LAW AND POLICY

Working Party No. 2 on Competition and Regulation

ROUNDTABLE DISCUSSION ON COMPETITION ISSUES IN THE ALLOCATION OF AIRPORT TAKE-OFF, LANDING SLOTS AND GROUND HANDLING SERVICES

-- United States --

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AIRPORT REGULATION

Submission by the U.S. Delegation

1. Who Is the Airport Regulator? What Are its Main Tasks?

The Federal Aviation Act of 1958, recodified as Title 49 of the United States Code, established the Federal Aviation Administration (FAA) with broad responsibilities for the regulation of air commerce in the interest of safety and, among other things, the encouragement and development of civil aeronautics.

Ownership of airports within airport systems can also vary. The same operating entity can own and operate a number of airports serving the same geographical market. Often, each airport attempts to serve a different segment of the market, i.e, domestic and international traffic or air carrier and general aviation. For example, three of the airports operated by the Port Authority of New York and New Jersey have different types of service: LaGuardia is primarily used for domestic services, Kennedy International Airport is primarily used for international services and Teterboro Airport is used for general aviation. Ownership of airports serving the same locality can also vary; for example, Dallas Fort Worth International Airport is owned and operated by the airport board, a creation of the Cities of Dallas and Fort Worth, Texas, and Dallas Love Field is owned and operated by the City of Dallas.

3. How Are Capacity Expansions Financed? Do Public Funds, Subsidies or Preferential Loan Conditions Play a Significant Role?

Capacity expansions are financed through five principal means:

- Bond Financing - sold at generally low interest rates and tax exempt, the bonds are backed by the issuing government authority and paid out of airport revenues.

- Federal Programs - these funds are generated from federally imposed and/or federally authorized user

4. How Is Access to the Market for Airport Capacity Regulated? Is There a Separation Between the Owners of Airport Infrastructure and the Actual Airport Operators?

Virtually all airports used by commercial airlines have accepted federal grant funds. Federal law requires airports receiving such funds to give certain "assurances." Among other things, the airport must agree to make its facilities available without discrimination and to charge only reasonable fees to aeronautical users of its facilities. Access to the market is treated on a first- come first-served basis. However, the FAA Office of the Chief Counsel has determined that a carrier may not be denied access to an airport solely based on the non-availability of currently existing facilities and that some arrangements for accommodation must be made if reasonably possible. Since the FAA determination, the great majority of new and expanded operations have been accommodated at U.S. airports.

Access to runway capacity at four U.S. airports (National Airport in Washington, DC, O'Hare Airport in Chicago, and LaGuardia and Kennedy Airports in New York) is governed by the High- Density Rule, and airlines must have operating slots to serve those airports. As described in more detail in the U.S. Delegation slot allocation paper, "domestic" slots, which may be used for either intra-U.S. or international flights, can be bought and sold freely. "International" slots, which may only be used for international flights, can only be traded on a one-for-one basis at the same airport. The FAA administers the slot system.

Access to non-runway infrastructure at the high-density airports, as well as other US airports, is generally governed by the airport management. In some cases, airlines have funded and operate their own terminals under arrangements with the airport management.

5. What Are the Main Features of Standard Licenses for Airport Operation (*e.g.* Fees Payable to the Licensor, Service Obligations, Extent of Exclusive Rights by License, If Any)? Are There Instances Where Several Different Companies Are Operating Separate Infrastructures Within the Same Airport?

As previously stated, the FAA licenses all air carrier airports in the United States. In addition, federal law requires that the fees charged aeronautical users for aeronautical use by any airport that has received federal grant funds or is publicly owned must be reasonable. Airports receiving federal grants must accept a number of other obligations, including the obligations not to engage in discrimination and not to grant

- Enter into contractual relationships with aeronautical users**.**

State law may also establish whether an airport owner can be considered a public utility, grant taxing and bonding authority, and allow the exercise of eminent domain powers.

At publicly owned airports, most operations conducted on the airport are carried out by private companies. Airlines usually manage and operate their own terminal facilities, service their own aircraft and handle their passengers and cargo or contract with another airline for the performance of these services. In addition, fixed-base operators may provide ground handling services and support for general and corporate aviation, as well as some commercial operators, retail concessions, automobile parking and ground transportation. Of course, the size of these services and the number of service providers vary based on the size of the airport.

6. What Is the Regulatory Framework for Airport Charges (Landing and Takeoff Charges,

Department can determine whether or not the charges conform with Federal requirements, but it may not establish the level of the charge if the charge is not consistent. Federal policy requires that fees for the use of the airfield and public-use roadways be established on the basis of historic costs.

The specificity of the international obligations applying to airport charges imposed on airlines varies. The Chicago Convention requires that charges imposed or permitted to be imposed by a Contracting State on aircraft of another Contracting States shall not be higher than those imposed on its national aircraft performing similar international operations. The U.S. model aviation user charges article specifies that user charges, in addition to being assessed on a national treatment basis, shall be just, reasonable, not unjustly discriminatory, and equitably apportioned among categories of users. User charges may reflect, but shall not exceed, the full cost to the competent charging authority of providing the appropriate airport, airport environmental, air navigation, and aviation security facilities and services at the airport or within the airport system. Such full cost may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis. States must also encourage consultations between charging authorities and airlines, with adequate information being provided to permit an accurate review of the charges. The Department of Transportation took these international obligations into account when it adopted the Rates and Charges Policy Statement, discussed above, and its requirements are consistent with these international obligations.