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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 --

This note is an annex of the document [DAFFE/CLP/WP2/WD(97)9] submitted by the Delegation of the United States to Working Party No. 2 FOR DISCUSSION at its next meeting on 19 June 1997.

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GROUND HANDLING SERVICES

Submission by the U.S. Delegation

1. Virtually all U.S. airports with commercial service have accepted either surplus federal land or federal Airport Improvement Grants or both. By accepting federal assistance, these airports agree to follow federal rules governing the provision and availability of ground handling services. Specific statutory provisions apply as well as assurances that must be given when a grant is accepted.
2. One federal rule prohibits airports from granting exclusive rights to any service providers. This exclusive rights prohibition applies so long as the airport is operated as an airport, and applies whether the exclusive right results from an express agreement, from the imposition of unreasonable standards or requirements, or by any other means. However, the mere fact that only one enterprise engages in any aeronautical activity at an airport would not violate the exclusive rights prohibition. In many instances, the volume of business may not be sufficient to attract more than one such enterprise. As long as the opportunity to engage in an aeronautical activity is available to those meeting reasonable qualifications and standards relevant to such activity, the fact that only one enterprise takes advantage of the opportunity does not constitute the grant of an exclusive right.
3. The grant assurance on exclusive rights recognizes that space considerations could affect operations by more than one service provider. The grant assurance states that:
 4. a person providing, or intending to provide, aeronautical services to the public will not be given an exclusive right to use the airport, with a right given to only one fixed-base operator to provide services at an airport deemed not to be an exclusive right if --
 - (a) the right would be unreasonably costly, burdensome, or impractical for more than one fixed-base operator to provide the services; and
 - (b) allowing more than one fixed-base operator to provide the services would require reducing the space leased under an existing agreement between the one fixed-base operator and the airport owner or operator; ...
5. However, the leasing to one enterprise of all available airport land and improvements planned for aeronautical activities could be evidence of an intent to exclude unless it is demonstrated that the entire leased area is presently required, and will be immediately used, to conduct the activities contemplated by the lease.
6. The statutory provision against exclusive rights does not apply if the owner of a public-use airport elects to provide any or all of the aeronautical services needed by the public at an airport; *i.e.* owners may exercise but not grant an exclusive right to conduct any aeronautical activity. However, these owners must engage in such activities as principals using their own employees and resources. An independent commercial enterprise that has been designated as agent of the owner may not exercise nor be granted an exclusive right. Moreover, even if an airport owner decides to exercise an exclusive right, it may not refuse to allow an air carrier to service its own aircraft, as discussed below. As a practical matter, airports themselves do not in general perform ground handling functions as a monopoly provider, so the exclusive use prohibition typically governs.

7. With respect to airport charges to fixed-base operators, another grant assurance provides that fixed-base operators using the airport in a similar manner will be subject to the same charges. Charges to carriers for aeronautical activities by an airport must be reasonable and not unjustly discriminatory.

8. In addition to the prohibition against exclusive rights that provides the underpinning for third-party ground handling at an airport, a separate grant assurance requires an airport operator to allow each air carrier using such airport to service itself or to use any fixed- base operator that the airport allows to serve air carriers at the airport. This assurance extends for the life of the project for which the grant is given (not to exceed 20 years). Each new grant triggers a new assurance period. If the grant is used to acquire real property, the assurance obligation extends so long as the airport is in use as such. In the United States, U.S. airlines typically provide their own ground handling services.

9. The United States believes that the ability to control the quality of service at airports is an important consideration for airlines with respect to both their passenger and cargo services. Therefore, as a complement to the domestic regulatory regime, the provision of ground handling services is covered in U.S. international air services agreements. Under the U.S. model ground handling article, airlines are allowed to perform their own ground handling or, at their option, have some or all of these services provided by competing agents. These rights are subject only to physical constraints resulting from considerations of airport safety.