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DAFFE/CLP/WP2/WD(97)9/ANN2



Organisation de Coopération et de Développement Economiques
Organisation for Economic Co-operation and Development

OLIS : 16-Jun-1997
Dist. : 17-Jun-1997

Or. Eng.

**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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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. Under these broad powers, the FAA seeks to achieve safety and efficiency of the nation's airport system through direct regulation and contractual obligations on airports in return for the use of federal grant-in-aid funds.

To fulfill this mission, the FAA performs a number of tasks including:

- Licenses and regulates all land airports that serve any scheduled passenger operation of an air carrier having an aircraft seating capacity of nine seats or more.
- Administers two Federal programs for the capital improvement of the airports: the Airport Improvement Grant Program and the Passenger Facility Charge Program.
- Develops standards for airport design, development, construction, maintenance, operation, safety and data.
- Develops programs to improve and enhance airport capacity.
- Administers airport programs pertaining to national airport planning, environmental, civil rights, and property transfers.

2. What Is the Prevailing Ownership Regime of Airport Infrastructure (Private/public, National/federal/local)? Are There Situations of Mixed Private/public Ownership? Do Airlines Own Significant Shares in Airports? Are Airports Within the Same Airport System Usually Owned And/or Operated by the Same Entity?

In the United States, the ownership regime covers a variety of organizational forms. To date, private involvement has been limited to the management and operation of airports. These services are performed under contract with a public owner and usually for a fee over a fixed term. However, while all airports used by commercial airlines are publicly owned, there are a few small general aviation recreational facilities in the United States that are privately owned. In addition, the U.S. Congress has authorized an experimental privatization program covering several airports to be selected from airports interested in participating in the experiment. United States cities operate airports through commissions, special departments of city governments, advisory boards or an aviation director answerable to a city government. County and state governments are also common agents of ownership and operation. The authority is another popular form of ownership. Similar to a private corporation, it attempts to manage an airport as a business, subject to the requirements imposed by federal law. Its board members are appointed by local elected officials.

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 fees on various segments of the aviation system. Under the Airport Improvement Grant Program, airports are given Federal grants for eligible projects. The grants are funded from the airport and airway trust fund, which receives its revenues from the \$6 international departure tax, the 10 percent domestic ticket tax, the 6.25 percent tax on domestic air cargo waybills, and the tax on noncommercial aviation fuel. In addition, with the approval of the FAA, airports can pay for capacity expansion by imposing a \$1, \$2, or \$3 Passenger Facility Charge on passengers using the airport. The total amount that can be collected under this program cannot exceed the projected cost of the project.
- **State Finances** - these funds are generated from state taxes and the amount available for airport development can vary from state to state.
- **Airport-generated funds** - the size of the market and the airport's traffic base determines the airport's ability to make a profit or surplus. Most airport profits are normally derived from non-aeronautical businesses, such as stores, restaurants, and parking lots. In most cases, all airport revenues must be used for the capital and operating costs of the airport, the airport system, or other facilities owned by the airport owner directly and substantially related to air transportation.
- **Airline and private investment** - airlines and private investors make capital investments in some types of airport facilities, such as terminals and hangars. The cost of capital and the tax treatment of airport financing produces a market that is conducive to investment by airport users, although the availability of alternate sources of funds, such as passenger facilities charges, has lessened the importance of this source.

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 any exclusive rights. Federal law also preempts state and local regulation of interstate air transportation and of airspace.

Forty-nine states have adopted airport enabling acts. These acts confer the powers necessary for local governments to establish, operate and regulate airports serving scheduled airlines as a “public” function. A few of the traditional proprietary powers of airport owners are:

- Acquire land for establishing or expanding an airport.
- Finance airport improvements.
- Impose fees, rentals and other charges on airport users.
- Promulgate regulations for the operation of the airport.

- 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, Aircraft Parking Charges, Passenger Charges)? What Is the Degree of Freedom of the Airport Operator in Setting Charges? Are Charges Set by a Regulator? Are They Cost Related? Is Peak-load Pricing Allowed? To What Extent Do International Treaties Put Constraints on the Design of Airport Charges?

All airport charges are established by the airport owner. However, Federal law requires that rates for aeronautical use of the airport be reasonable and not unjustly discriminatory. It also requires, in most cases, that all revenues generated by a public airport must be expended for the capital or operating costs of the airport, the local airport system, or other facilities owned or operated by the airport owner or operator that are directly and substantially related to air transportation. In June 1996, the Department of Transportation and the FAA issued a Policy Statement Regarding Airport Rates and Charges that set out five principles that airports should ordinarily follow when setting aeronautical charges:

1. In general, the Department of Transportation relies upon airport proprietors, aeronautical users, and the market and institutional arrangements within which they operate, to ensure compliance with applicable legal requirements. Direct Federal intervention will be available, however, where needed.
2. Rates, fees, rentals, landing fees, and other service charges (“fees”) imposed on aeronautical users for aeronautical use of airport facilities (“aeronautical fees”) must be fair and reasonable.
3. Aeronautical fees may not unjustly discriminate against aeronautical users or user groups.
4. Airport proprietors must maintain a fee and rental structure that in the circumstances of the airport makes the airport as financially self-sustaining as possible.
5. In accordance with relevant Federal statutory provisions governing the use of airport revenue, airport proprietors may expend revenue generated by the airport only for statutorily allowable purposes.

The Rates and Charges Policy specifically provides that “(a) properly structured peak pricing system that allocates limited resources using price during periods of congestion will not be considered to be unjustly discriminatory. An airport proprietor may, consistent with the policies expressed in this policy statement, establish fees that enhance the efficient utilization of the airport.”

In addition to issuing a Rates and Charges Policy Statement, the Department of Transportation has established expedited procedures for considering user charges if a significant dispute arises. The

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.