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Dear Ms Allen

CONSULTATION ON THE INTRODUCTION OF A SANCTIONING MECHANISM FOR THE MISUSE OF SLOTS

Airport Coordination Limited (ACL) is the designated coordinator at the four coordinated airports in the UK (Heathrow, Gatwick, Stansted and Manchester). It also provides a schedule facilitation and data collection service at ten other UK airports not designated under the EU Slot Regulation 95/93 as amended by Regulation 793/04 (the Regulation). ACL has also been given responsibility for the coordination of Dublin Airport by the Irish Government. Dublin airport will become coordinated with effect from Summer 2006. Just over 2 million aircraft movements are coordinated or facilitated by ACL at these airports each year.

ACL welcomes the DfT's consultation on how slot misuse can be discouraged or eliminated by the possible introduction of sanctioning mechanisms. ACL also welcomes the DfT's efforts to gather the views of industry experts on this difficult subject in their responses to this consultation document.

ACL is not a policy-making organisation but is responsible for the administration of the current slot allocation regime in the UK, and is thus uniquely placed to respond authoritatively to most of the issues raised in the consultation document.

ACL understands that the results of this industry consultation will inform the revision of the Statutory Instrument (the SI) 1993/1067 (The Airports Slot Allocation Regulations 1993).

As the Government is aware, there are a large number of changes, outside the scope of this consultation, which need to be made to the SI to bring it up to date.

ACL has provided input to the DfT on many of these issues and is willing to provide further input, if required, as the Government develops its final draft of the revisions to the SI.

In particular ACL has provided input to the DfT on the implementation of Article 11.2 (measures to protect the coordinator), and would wish to see suitable provisions incorporated into any updated SI.



In addition, whatever decisions are taken by the DfT following this consultation they must not directly conflict with Phase two of the amendment to the Regulation currently under consideration by the European Commission.

ACL has no objection to the DfT copying or disclosing this response to other organisations.

ACL would welcome the opportunity to discuss its comments and suggestions with the DfT.

Yours sincerely

Peter Morrisroe
Managing Director

cc Mrs H John, DfT

Introduction

ACL welcomes the Government initiative to consult the stakeholders in the aviation industry on these very important but potentially divisive questions. The importance of this consultation cannot be understated.

The important decisions that the Government takes following this consultation will set the scene for achieving the Government's objective of maximising the efficiency of the slot allocation system at the increasingly congested UK airports for many years to come. The Government decisions will also set the future framework for the relationship between the air carriers, the airports and the coordinator at UK airports.

This is also, arguably, a 'once in a lifetime' opportunity to address the issue of slot misuse at UK airports and perhaps provide the lead to other EU Member States which are at various stages in the process of considering the development and implementation of sanctions in their own countries.

Slot misuse is not widespread. The vast majority of air carriers comply fully with the slot allocation system. There is little intent to abuse the slot allocation system by these air carriers.

Some air carriers are reluctantly, on occasions, 'forced' to misuse slots by extreme operational or commercial pressures.

A small number of air carriers commit repeated and intentional misuse for a variety of commercial and operational reasons.

It is the behaviour of these air carriers that the potential sanction regime must address whilst not creating a more onerous operational environment for the majority of air carriers.

The level of slot misuse varies depending on the level of congestion and the mix of traffic. It is important that any sanctions regime which may be considered is non-discriminatory between different types of traffic.

Format of this Response

The following three sections contain ACL's detail response to each of the three key questions in the consultation document.

ACL has also provided some brief comments on Annex B in the consultation document – the Partial Regulatory Impact Assessment.

1. Is there a Need to Address Slot Misuse at the UK's Coordinated Airports?

The starting point must be – is there clear evidence of slot misuse at the UK's coordinated airports and, does it have an adverse impact on other air carriers and the airports' performance? A further question must be whether only the types of slot misuse identified in Article 14.5 (repeated, intentional and significant) should be addressed in a revised SI or whether all types of slot misuse should also be addressed?

A) Is there clear evidence of slot misuse?

ACL regularly receives ‘actuals’ data from the airport operators at each of the coordinated airports and routinely compares the actual arrival and departure times with the allocated slot times.

Using purpose built software ACL is able to match all the flights in the two sets of data and using sophisticated filtering tools and statistical techniques ACL is able to identify all repeated and significant schedule variations. The terms repeated and significant are open to interpretation.

Intent to misuse slots is determined using a variety of statistical and investigative techniques and requires ACL to exercise some judgement.

Currently ACL works closely with the Slot Performance Committees at the coordinated airports in order to determine an appropriate course of action when there is evidence of repeated and intentional slot misuse.

It is important to note that, in many cases, it is immaterial whether the slot misuse is repeated or particularly significant, as small amounts of misuse, even operating 10 to 15 minutes off slot, at a heavily congested airport can have a significant adverse impact on levels of congestion and on the performance of other air carriers. - see Figure 1 below.

B) Does slot misuse have an adverse impact on other operators and airport performance?

All forms of slot misuse, identified in the consultation document, can be harmful to other air carriers who are working hard to comply with their allocated slots.

As the utilisation of available capacity increases so the levels of congestion and delay also increase.

The operation of a single additional flight on a single day in hours of peak congestion can have a remarkable impact on the level of delays for all other air carriers, the majority of which are trying to operate to their allocated slots.

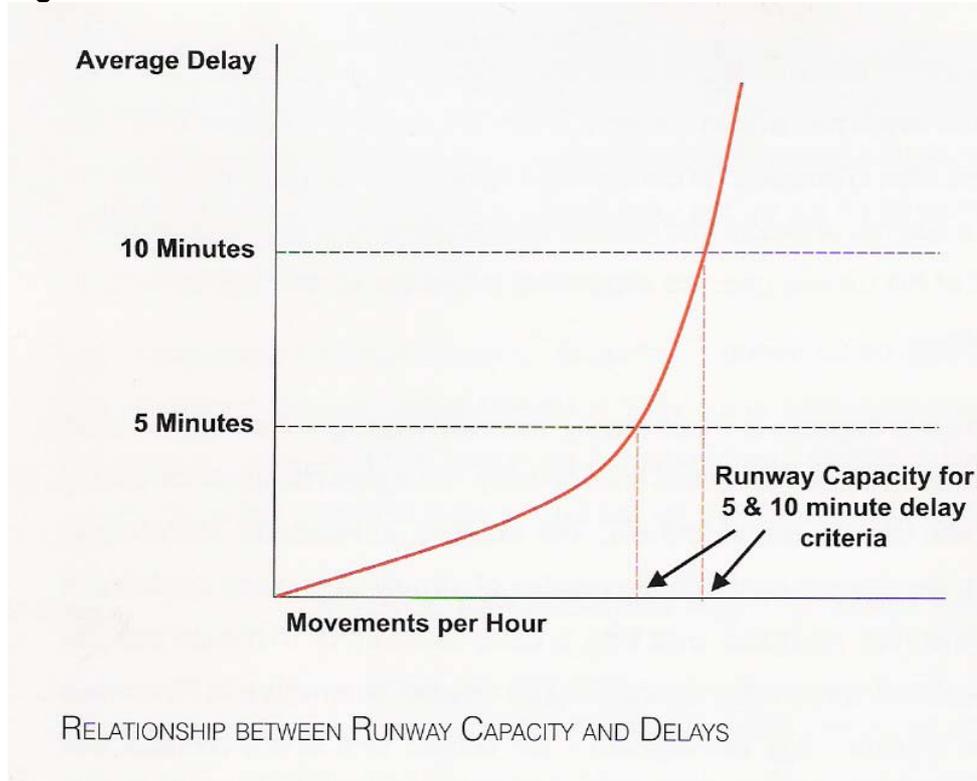
It should be noted that even ad hoc operations by airlines or General/Business Aviation can have an adverse impact on other air carriers and any new sanctions regime must be equally capable of dealing with ad hoc slot misuse as it is in dealing with repeated misuse.

Figure 1 below, taken from the NATS 2003 Guide to Runway Capacity, shows the impact on average delay of additional movements operating in the hours of peak congestion at Heathrow and Gatwick.

INTRODUCTION OF A SANCTIONING MECHANISM FOR THE MISUSE OF SLOTS – ACL RESPONSE

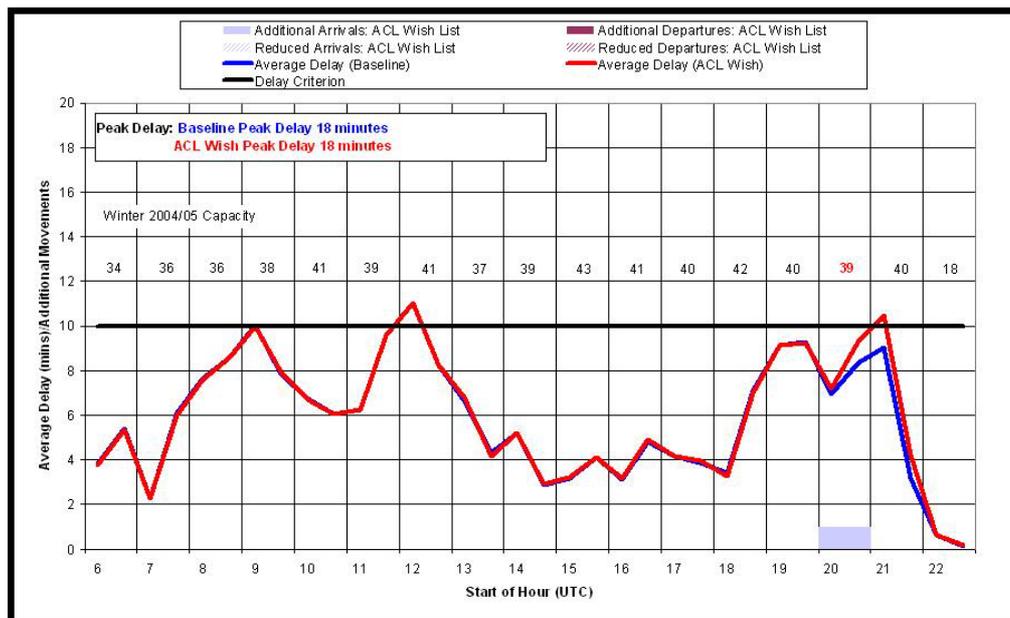


Figure 1:



Any additional movements, resulting from slot misuse, even on an ad hoc basis, can clearly add to the level of average delay for all air carriers in these congested hours.

Figure 2: Additional Delay of One Off-slot Operation
Source: NATS



INTRODUCTION OF A SANCTIONING MECHANISM FOR THE MISUSE OF SLOTS – ACL RESPONSE



As can be seen from Figure 2 above, even one additional movement in busy hours can significantly increase the level of delays for other air carriers, adding over a minute of additional delay to **every** subsequent flight in the following hour.

C) **Should all types of slot misuse be addressed?**

The consultation paper contains a list of the most widely recognised types of slot misuse identified by ACL at the four UK coordinated airports. Similar problems exist, to varying degrees, at coordinated airports throughout the EU.

These types of slot misuse vary in their impact, depending upon the magnitude and frequency of the misuse, the time of day, day of week and the season of the year. This is because the level of slot utilisation at airports also varies by time of day, day of week and season.

The greatest impact is felt at the times when most/all of the available slots have been allocated.

Whilst the consultation seeks to gather the views of the stakeholders on the effective implementation of Article 14.5, dealing with repeated and intentional operation of air services at significantly different times from the allocated slot, it would, in ACL's view, be a missed opportunity not to deal with some other forms of slot misuse in the SI, which can have an equally significant impact on the performance of UK airports and the performance of the air carriers serving those airports.

As the consultation makes clear local rules, which include administrative sanctions, have been successfully introduced at Gatwick to address some types of slot misuse

It is very difficult to ensure that such local rules fully comply with Community law and thus they are vulnerable to challenge. ACL would prefer to operate within parameters which are more clearly defined in a revised SI.

As the consultation paper outlines in Annex C, a number of other EU Member States already have financial and administrative sanctions in place and, in order to meet their duties under Article 14.5, other EU countries are in the process of consulting upon/implementing similar sanction regimes.

It would appear to ACL irrational that the UK, with some of the most highly utilised and therefore most highly congested airports in Europe, does not to have an effective and dissuasive sanctions regime in operation to prevent the misuse of slots, which can often add to the level of congestion and delays.

Figure 3 shows the utilisation of slots (scarcity of available capacity) in a peak week in Summer 2005 at a selection of EU airports and whether sanctions to combat slot misuse are in place or under development.

Figure 3:

City	Slot Utilisation	Sanctions Regime
Heathrow	98%	Subject of this consultation
Frankfurt	96%	Financial sanctions in place
Gatwick	93%	Subject of this consultation
Barcelona	87%	Financial sanctions in place
Paris (CDG)	85%	Review of Regulation to be initiated
Madrid	84%	Financial sanctions in place
Amsterdam	76%	Sanctions due to be introduced shortly
Munich	76%	Financial sanctions in place
Zurich	65%	No plans to introduce new regime
Brussels	48%	Under development

Additionally ACL has clear evidence from some UK and some overseas air carriers that if, for operational or commercial reasons, they are ‘forced’ to misuse slots they will commit the slot abuse in whichever country and at whichever airport does not apply financial or administrative sanctions.

With more EU Member States in the process of developing and implementing sanctions against slot misuse if the UK does not ‘follow suit’ then there is an increasing danger of more slot misuse at progressively more congested UK coordinated airports with insufficient measures in place to address the abuse.

ACL would therefore support the introduction of a portfolio of sanctions under the Statutory Instrument designed to deal with all types of misuse listed in the consultation document on page 3.

2. What Types of Sanctions are Appropriate?

ACL supports a system based on a combination of both administrative and, if necessary, financial sanctions, enforceable under the Statutory Instrument, and also supports the concept of a ‘sliding scale’ of sanctions relative to the seriousness of the proven slot misuse.

When the DfT has decided, based on the responses to the consultation, what type of sanctions (administrative, financial or both) should be applied and the types of misuse (regular and intentional misuse or other types of misuse) further work needs to be undertaken to develop, in detail, an appropriate scheme. Such a scheme must ‘map’ the various sanction options including the sliding scale against the various types of misuse.

The air carriers likely to be affected by the application of sanctions must be consulted on the detailed design of such a scheme.

The key objectives of any sanctions regime, which should be transparent to all and, ideally, easy to administer, must be that it discourages slot misuse so that the application of sanctions/penalties should only be necessary in the most blatant/extreme cases and after communication with the air carrier concerned.

As outlined above ACL would support a portfolio of sanctions designed to deal with **all** types of misuse listed in the consultation document on page 3. This should not be perceived a 'gold-plating' the Regulation but rather as a pragmatic intervention to put measures in place for the longer term, which hopefully will never need to be used, to prevent all types of slot misuse.

A) Administrative Sanctions

As outlined above the industry has experimented, in the UK and elsewhere, with a variety of types of sanctions over a number of years including the development of local rules which, inter alia, give lower priority to future applications for slots by air carriers who have been guilty of slot abuse.

In the UK administrative sanctions have been reasonably successful in combating some forms of slot misuse and changing air carriers' behaviours regarding their slot applications and the management and return of their slot allocations which are not required.

The most important 'administrative sanction' is of course the potential loss of historic rights for proven slot misuse.

Other types of administrative sanctions can be envisaged, (some of which are mentioned in the consultation document) to deal with different types of slot misuse, for example:

- remote parking,
- lower priority for future slot applications,
- financial deposits for slots,(slot reservation fee)
- requirement to justify (excessively) large slot requests,
- slots applications refused or only allocated on a 'provisional' basis (until some criteria are met)
- confiscation of slots,
- no allocation of arrival slots without departure slots
- coordinators only making realistic (operable) slot offers
- refusing ATC flight plans (permitted under the Regulation)

One of the weaknesses of the current administrative sanctions is that the chances of air carriers having the sanctions applied to them is low and that sanctions tend to take effect retrospectively, often at the end of the season, so are quite divorced from the time when the slot misuse was actually committed.

Another drawback with administrative sanctions is that, in ACL's experience, they are quite difficult to administer amongst all the other priorities and objectives of slot allocation.

It appears to ACL, based on anecdotal evidence from other EU coordinators that the risk of financial sanctions may be effective in changing air carriers' performance and behaviour to comply with the slot allocation regime.

B) Financial Sanctions

It is ACL's view that, in general, financial sanctions should be implemented as an additional measure to deal with slot misuse not effectively controlled by administrative sanctions and as a measure of last resort after other efforts by the coordinator to persuade the air carrier to comply with the rules of the slot allocation system have failed.

In order to be dissuasive in the longer term any financial sanctions must be set at a sufficiently high level to be effective in changing air carriers' behaviour. Token sanctions will simply create additional work, cause friction between the air carriers and the coordinator and fail to achieve the required changes in performance and behaviour.

Financial sanctions also must be proportionate to the type of slot misuse committed. As outlined above any abuse must be judged 'in context' as the impact of some slot misuse is much more serious than the impact of other forms of abuse. For example, the occasional failure to operate a slot without cancelling is much less serious than an air carrier that repeatedly and intentionally operates a service in the peak hours having been allocated a slot in off peak hours.

In ACL's view an air carrier's performance can only be effectively and fairly judged by the coordinator in the context of previous and current slot performance, behaviour and slot misuse by the same air carrier.

It is anticipated, based on the experience of other EU coordinators, that the very existence of proportionate but significant financial sanctions will be sufficient deterrent to minimise the abuse of the coordination system without the sanctions ever having to be applied in all but a few extreme and proven cases.

C) Criteria

Critical to the application of any sanctions, be they administrative or financial, would be the flexibility of the administrative authority to evaluate each case on its merits depending upon factors such as:

- Was the abuse intentional?
- Was the abuse repeated?
- Was the abuse significant?
- Was the slot misuse 'force majeure'?
- How strong is the evidence of slot misuse?
- Is this a first offence or a repeated offence?
- Does the slot misuse really cause prejudice to airport operations (e.g. adds significantly to congestion and delays)?
- Did the air carrier attempt to correct the slot misuse promptly when requested to do so by the coordinator?

3. Who is the most appropriate body to administer and enforce the system and act as arbiter in disputes or appeals?

Option 1

ACL does not support the proposal that the airport operator or the Slot Performance Committee, would necessarily be the most appropriate bodies to administer any slot sanctioning system, even with the administrative support of ACL, though clearly both have an important role to play in any sanctions regime.

The main disadvantages of airports or SPC's administering the sanctions system is that it is highly likely to lead to the inconsistent application of the system across the four UK coordinated airports if the system were administered independently at each individual airport.

There is also the question of trust. Many air carriers would be nervous about allowing any airport operator to apply a performance based financial penalty (levy) on their services which might be misinterpreted as a cash raising venture!

There are also concerns that a sanction regime administered by the airport operator may set a dangerous precedent for less scrupulous airport operators outside the UK to implement a similar regime.

The main disadvantage of the Slot Performance Committee (SPC), in its current form, administering any sanctions regime, either as the first or second tier, are the weaknesses of Slot Performance Committees identified in the consultation paper e.g. slow reaction times, too many issues keep coming back to the Committee and the lack of impartiality.

ACL would instead advocate that it should be the first tier responsible for the application of administrative and/or financial sanctions, the SPC as the second tier responsible for the oversight of the sanctions being applied by ACL and an independent appeals authority such as the airports' statutory disputes process or the CAA as the highest tier of the system. Dissatisfied air carriers will always have recourse to the judicial system if they are unhappy with the application of sanctions by any administrative authority.

Some restructuring of the SPC's, which are chaired by the airport operator, would be required to cope with the additional responsibilities outlined above.

While ACL's proposal may appear to be a bureaucratic and time consuming structure it is, in ACL's view, essential to build on the strengths of the existing arrangements yet add more 'checks and balances' which become necessary where administrative or financial sanctions are being applied.

In reality it is likely that the appeals mechanism will be triggered only rarely if the other checks and balances outlined above are well designed and effective.

Careful consideration needs to be given to integrating the role of the airport operator into the scheme proposed by ACL as it has its own enforcement powers and enforcement processes and chairs the SPC.

Option 2

There are, in ACL's view, considerable efficiency and consistency benefits of ACL, as the existing administration and enforcement body for the slot Regulation, being the body which also has the power to impose sanctions. ACL therefore supports Option 2 in the Government's consultation paper.

An enhanced role for ACL would be underpinned by an enhanced and refocused role for the Slot Performance Committees (SPC), vetting the application of serious administrative or financial sanctions. In addition an independent appeals authority such as the airports' statutory disputes process or the CAA would be established to arbitrate in disputes and appeals over sanctions. ACL's rationale for this proposal is as follows:

- a) It is very difficult to separate out ACL's enforcement powers under the Regulation (powers to issue orders or directions or withdraw permissions (slots)) from a power to impose administrative or financial penalties.
- b) Sanctions imposed by ACL as the enforcement body would be subject to appeal to an independent body. As in other industries the independent appeals authority

must have the power to lower or raise the level of fine (as a disincentive to unnecessary appeals, where the fine is plainly justified). A robust appeals process acts as a brake on an irrational fining policy.

Assuming ACL is designated as the competent authority to impose sanctions, financial and administrative, under the Regulation, careful thought needs to go into the endorsement and appeal mechanism, because the nature of these mechanisms has a direct impact on the soundness of decisions made to impose penalties.

- c) At a practical level enforcement agencies in other industries seek to achieve some stability to the fining system by creating a legislative framework (mapping different sanctions against different forms of misuse) within which the sanctions system should operate such as:
- Issuing guidelines (as the Office of Fair Trading do), as to what the approximate level of the fine will be for a particular offence, and the criteria to be taken into account (this can include discounts for co-operation/owning up – leniency policy). The advantage of guidelines is that they can be varied by consultation, without the need to change the underlying legislation in the SI;
 - Ensuring that, in the internal process of the enforcement agency, at the end of the "fact finding" stage, before a decision is implemented, another expert person (MD of ACL) or group (such as the SPC) is brought onto the case to add a fresh view and ensure objectivity (case handlers can get too close to their cases). DG Competition of the European Commission does this in competition cases.
- d) A key issue is who else could be responsible for the imposition of penalties other than ACL. The Regulation requires that schedules facilitators and airport coordinators be independent, neutral and non discriminatory. This means independence not only from any one interested party or air carrier, but also, as a practical matter, independent of the Government which sets policy in the area.
- Looking at similar bodies, both those which are non-ministerial government departments, such as OFCOM, or semi private bodies, such as ICSTIS, they all seem to combine enforcement of the sectoral rules with the power to impose an administrative penalty.
- e) There is a much greater danger of inconsistency of treatment of the same issues between different airport operators who would get caught up in extraneous 'political' and commercial issues with air carriers if each airport is undertaking the enforcement role independently. The same arguments would apply to the risk of inconsistency if SPC's at individual airports were made responsible for the application of sanctions.
- f) ACL would need to provide extensive data and support for a sanctioning process undertaken by anyone other than ACL. Consequently it would probably be most efficient for ACL to undertake the role itself.

It is also very important to understand that the imposition of a sanction for a particular misuse of slots does not take place in isolation but is often part of an ongoing process of managing an air carrier's behaviour and performance as part of a continuous dialogue between the coordinator and the air carrier.

Conclusion

ACL is willing to support, with data and technical expertise, whatever structure the DfT introduces following this consultation – ideally the appointment of ACL as the most appropriate enforcement authority, supported by Slot Performance Committees in more difficult cases and some other independent authority acting as an appellate body.

A ‘balanced’ approach is best achieved by putting in place an appropriate portfolio of sanction mechanisms designed to deal with all the types of misuse listed in the consultation document – and applying them wisely and judiciously, as infrequently as possible to bring about the necessary changes in air carriers’ performance and behaviour.

The DfT will not be thanked, despite its concerns about ‘gold plating’ the Regulation, if following this consultation, it misses the opportunity to seize the initiative to prevent the misuse of slots at the UK coordinated airports by introducing a suitable sanctions regime that will stand the test of time.

Partial Regulatory Impact Assessment (RIA) – Annex B

ACL broadly supports the Partial Regulatory Impact Assessment in Annex B of the Consultation document.

It appears to present a reasonable balance between the impact on the various stakeholders (except ACL!) and the risks and benefits of the various options.

The DfT sets out four options in its RIA. ACL's views on the four options are:

Option 1

ACL agrees that the UK Government would be in contravention of the Regulation if it were to do nothing and agrees that this option should be rejected. Without an appropriate regime slot misuse is likely to increase in the future.

Option 2

ACL agrees that the current system, based solely on administrative sanctions, is probably insufficient to deal with the types of slot misuse present in the UK today which can have a significant impact on air carrier and airport performance.

Option 3

As outlined above ACL supports a system combining administrative and financial sanctions as a portfolio of tools to deploy based on the circumstances and the severity of each individual case of proven slot misuse.

ACL also agrees that as more UK airports become more congested therefore the need for an appropriate sanctions regime will increase and the benefits to the UK of applying pressure on air carriers to prevent slot misuse will also increase.

ACL would be prepared to bear the resource cost of developing and implementing a sanctioning system. The independent authority selected to manage the appeals and disputes would need to fund this process.

Very careful consideration would need to be given to the process of collecting, handling and accounting for the money raised from any financial sanctions.

In ACL's view, as a minimum, the funds raised must cover the cost of the administration of providing an efficient sanctioning and appeals service, whichever organisation provides it, with the balance of money raised going to the airport or to the CAA for the benefit of the air carriers affected by slot misuse in order to avoid any perverse incentives by the administration authorities.

ACL would be prepared to write to the stakeholders (Communications strategy) to provide operational guidance on the application of this option if it is selected as the enforcement authority.

Option 4

As outlined above ACL supports the principle of implementing a sanctions regime which goes beyond the limited scope of sanctions to penalise regular and intentional abuse as set out in Article 14.5 of the Regulation. The regime should, ideally, deal with all types of slot misuse as an investment in the future control of UK airports in order to prevent air carriers abusing slots in the UK to avoid sanctions which would be applied to them at airports outside the UK.

Other Member States in the EU have already 'gold plated' the Regulation with other States developing plans to do so.

ACL would be prepared to write to the stakeholders (Communications strategy) to provide operational guidance on the application of this option if it is selected as the enforcement authority.