



Airport Coordination Ltd. Guidance on Joint Operations

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1. From time to time ACL is asked to confirm that an operation shared by two or more airlines is a “joint operation” for the purposes of the EU Slot Regulation, and therefore use of the slots is valid “use” for the purposes of the “use it or lose it” rule.
2. The EU Slot Regulation is what is termed a “directly applicable” piece of EU legislation; it is for the appointed coordinators to apply how the Regulation should work, and decide what concepts used in the Regulation should mean in practice.
3. Although the EU Regulation does not define the term “Joint Operation”, found in its Article 10.8, the following factors point to a Joint Operation being one where two airlines either have a substantive shared commercial interest in, or operating responsibility for, the flights using the slots.
 - a. The Regulation needs to be interpreted in the light of its purpose. The purpose of the Regulation is that slots should be used by the airlines to which they have been allocated and not by another airline. As a scarce resource the airline to which they are allocated should use them, and if it cannot use them, they fall back into the pool. The exceptions to the principle that the airline to whom a slot is allocated must itself operate the flights using the slots are limited. These include:
 - i. Transfers of slots within a corporate group (Article 8.a.1.b);
 - ii. Slot exchanges (Article 8.1.1.c);
 - iii. Joint Operations.

The strict exceptions to the rule that the airline to whom the slots are allocated should use them are designed to prevent slots being casually lent from one airline to another

- b. Article 2.b.f.ii defines a “group of air carriers” to mean “two or more air carriers which together perform joint operations, franchise operations or code sharing for the purpose of operating a specific air service”. Thus a joint operation is something more than, or at least different from, a franchise operation or a code share operation.
- c. Article 10.2 of the Regulation says that an air carrier is only entitled to the same series of slots in the next equivalent scheduling period if the air carrier can show to the satisfaction of the coordinator that the slots “have been operated as cleared by the coordinator, by that carrier for at least 80% of the time”. “Operating” a flight must mean something more than merely lending a slot to another carrier.
- d. When Article 10.8 of Regulation 793/2004 was adopted, the then extant version of the IATA Worldwide Scheduling Guidelines appear to have provided a broad (but not exact) precedent for Article 10.8. The then guidelines defined “Shared Operations” as:

A generic term referring to various types of operational or commercial arrangements between two or more airlines. Examples of shared operations are:

Codesharing: a term describing flights which, although operated by a single operator, may be shared in commercial terms with any number of other operators normally through interline agreements.

Joint Operation Flight: a flight on which more than one airline operates one or more of its legs. Only one flight designator exists for each operating flight”.

This definition is consistent with the EU Slot Regulation which differentiates between mere code sharing on the one hand and a shared or joint operation in the other (see Article 3).

- e. Some further guidance can be found as to what is intended by the term “joint operation” in a regulation in the competition law field which was in force in 2004 when the revised EU Regulation was adopted. Regulation (EEC) no. 1617/93 dealt with joint operation agreements between air carriers. Article 3 of the then Regulation 1617/93 stated that the exemption from the prohibition on anticompetitive agreements given by Article 101(3) TFEU can only apply to a joint operation agreement if (as well as various other criteria) the joint operation “concerns the sharing, by one carrier, of the costs and revenues of another air carrier in respect of a scheduled air service which the latter is operating”.
4. Article 10.8 of the EU Slot Regulation says that air carriers involved in joint operations must advise the coordinator of the detail of such operations. When looking at such details which air carriers give to ACL to see whether a proposal will qualify as a joint operation, ACL looks at each case on its merits. ACL considers that for two air carriers to have a valid Joint Operation they must both have a substantive shared commercial interest in the flights or joint operating responsibility. In doing so ACL looks at various factors:
- a. Will both carriers share responsibility for the practical operation of the flight?
 - b. Will both carriers have a substantial commercial interest in the financial success of the flights operated using these particular slots?
 - c. How will the commercial interest (profit as well as risk of loss) be shared between the air carriers? Will it be shared profits, shared revenues, shared revenues after deduction of some costs?
 - d. Who will supply the aircraft, the air crew, and the cabin crew?
 - e. Will one carrier take a substantial risk on flights where another carrier provides aircraft and crew – for example by block booking, and paying for, a substantial proportion of the seats?