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Sent by mail and email

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Dear Mr Calleja,

Consultation on the application of Council Regulation (EEC) 793/2004 on common rules for the allocation of slots at Community airports

Airport Coordination Limited (ACL) is the designated Coordinator at the four coordinated airports in the UK (Heathrow, Gatwick, Stansted and Manchester) and the two schedules facilitated airports (Birmingham and Glasgow). It also provides a schedule facilitation and data collection services at 13 other UK airports not designated under EEC Regulation 95/93 as amended by Regulation 793/2004 (the Regulation).

ACL has also been appointed as the schedules facilitator and coordinator of Dublin Airport by the Irish Commission for Aviation Regulation and provides a data collection service at Shannon Airport.

In total ACL is currently responsible for providing high quality services at 19 airports with further airports requesting its services. ACL has undertaken its duties independently and in a neutral, transparent and non-discriminatory manner as required by the Regulation since its formation in 1992.

Over 2 million aircraft movements are successfully coordinated or facilitated at these airports each year by ACL.

ACL regards the 2004 revision to the Regulation as a significant improvement on the old Regulation 95/93 but also welcomes the Commission's current efforts to improve the Regulation further. As the coordinator of two of Europe's most constrained airports, Heathrow and Gatwick, ACL has often found itself in the lead in exploring the ambiguities and possible alternative interpretations in the Regulation and therefore feels well qualified to respond to the Commission's consultation.

The clarity of the drafting of the Regulation is critically important to all coordinators so that the scope for differing, and perhaps incorrect, interpretations of key provisions is minimised.

ACL has taken extensive legal advice on possible interpretations of the Regulation and, in some cases, it has been necessary to develop local rules and guidelines to provide a common basis of interpretation and application of the Regulation in the UK.

ACL has also worked with the other EU coordinators through the EUACA in order to develop a series of European 'Recommended Practices' to ensure that the application of the Regulation is, so far as is possible, consistent across the EU.

Copies of these Recommended Practices have been sent to the Commission with the response of the EUACA.

Response to Questions

Your letter of 8th December raised a number of questions to which ACL would like to respond, based on its experience in coordinating UK and Irish airports, using the question structure in your original letter.

New Entrants

To what extent has the new entrant rule promoted competition on intra-Community routes?

ACL is not qualified to comment on the extent to which the changes to the new entrant rule have 'promoted competition' as levels of competition are affected by a wide variety of factors at hub and spoke airports such as those in Europe.

The existing rules facilitate access to congested airports for new services and, on occasions, new carriers on a small scale but this is not necessarily the same as opening up markets and genuinely promoting competition.

In general ACL would prefer the development of alternative criteria to prioritise slot requests at the most heavily congested airports which could either work alongside a modified new entrant provision or replace it completely. ACL and other industry stakeholders in the UK have already spent some time considering more realistic criteria than the existing new entrant rules to prioritise demand for slots at coordinated airports albeit in the context of a significant increase in new capacity.

In ACL's experience the higher priority of new entrant status is not widely understood amongst Community based carriers and is even less well understood by airlines based outside the EU. Consequently this higher priority is seldom requested by airlines as required under Article 7(1) of the Regulation. Coordinators do not automatically assign new entrant status if airlines do not request it because of the limitations on changes to new entrant slots.

For the airlines which do understand the new entrant rule, the restrictions on the subsequent use of slots requested with this higher priority contained in Article 8a(3) (no change of use of slots for 2 years) can inhibit them (particularly the flexible low cost carriers) from requesting slots with the new entrant status. Longhaul carriers are less concerned by these restrictions.

Two changes were made to the definition of new entrant in Article 2b of Regulation 793/2004:

- 1) the introduction of a category of new entrant for services to a regional airport that is currently not served, and;

- 2) increased limits on slot holdings whereby air carriers can qualify as new entrants from 3% to 5% of slots available at a particular airport and from 2% to 4% of slots available in the airport system.

A 'regional airport' is not defined in Regulation 793/2004, but by ACL it is taken to include only airports within the EU (or EEA). Therefore, any service that meets the criteria for a new entrant under Article 2b (iii) also qualifies under Article 2b (ii), the 'intra-Community route' new entrant definition, which is unchanged from Regulation 95/93. This means that the introduction of the Article 2b (iii) 'regional route' new entrant definition did not result in any additional slot requests receiving new entrant priority than would have been the case under Regulation 95/93.

The change to the limits on slot holdings, above which air carriers do not qualify as new entrants, has had little effect in practice in the UK, although it may have increased the scope for additional new entrant applications at some other airports in Europe e.g. Orly.

In the UK few air carriers fall within the 3% to 5% range of slot holdings. For the Summer 2007 season, the increased threshold permitted only a few additional air carriers to qualify as new entrants: 2 at Heathrow, 1 at Gatwick, 3 at Manchester and none at Stansted. Of these carriers, none claimed new entrant status as part of their Summer 2007 slot requests.

To what extent has the new entrant rule promoted competition on intra-Community routes?

ACL has already commented upon its inability to determine the effect on competition.

In ACL's experience in the UK, the 'intra-Community route' new entrant category is seldom requested. Within the London Airport system (Heathrow, Gatwick and Stansted) many intra-Community routes already have 3 or more competitors.

The fact that new entrant competitors are limited to higher priority for less than 5 slots per day on any route (i.e., 2 daily rotations) means that they are prevented from expanding and are unlikely to be effective competitors on most of the European business routes which are currently served by high-frequency services.

The 'less than 5 slots per day' limitation could result in the 'fragmentation' of the pool amongst many small operators. This could have the effect of strengthening the relative position of the large incumbent carriers at hub airports.

In general, ACL is of the view that the new entrant rule has been ineffective in increasing the number of intra-Community routes awarded slots in the slot allocation process.

To what extent has the new entrant rule encouraged the development on new routes?

It is difficult to quantify which new routes may have been facilitated by the new entrant rules.

In general, at congested airports such as Heathrow and Gatwick, the new entrant rules have clearly encouraged the greater access to the airport by longhaul services and routes because of their lower frequency/slot requirements. As an example the liberalisation of the UK/India bilateral in 2005 has enabled two new Indian carriers to each obtain daily sets of slots at Heathrow from the pool as 'new entrants'. Other significant new entrant allocations in 2006 were daily sets of slots for TAM Brazilia Airlines and a second daily frequency for Air New Zealand.

To what extent has the new entrant rule facilitated new entrants in obtaining slots at congested Community airports?

The benefits of the higher priority of the new entrant rule appear principally at the most congested airports. At coordinated airports such as Stansted and Manchester which are not congested throughout the day virtually all requests are allocated slots whether new entrant or incumbent at, or close to, their requested times.

At Heathrow there are a significant number of new entrants to choose from. The coordinator is generally able to achieve the 50% new entrant allocation and still meet the objective of efficient allocation of slots by allocating capacity typically to longhaul non-EU operator with requirements for fewer slots.

Gatwick is a more difficult airport, as it is constrained but does not have the right 'type' of requests from new entrants. ACL did not achieve 50% new entrant allocations for summer 2007 as the potential new entrant carriers wanted peak morning slots, or morning and evening rotations. Capacity was not available in the morning and evening-only services would not be commercially feasible.

Looking at Gatwick data in more detail (Summer 2006) results show that new entrants made up 25% of requests and 22% of slots allocated. Tracking the allocations through the process, 33% of slots offered to new entrants were used, whereas 68% of slots offered to incumbents were used. There is a pattern, which is often repeated, that slots allocated to new entrants are often handed back later in the scheduling process which makes coordinators more cautious about allocating slots to new entrants.

The new entrant rule is a primary criterion in the allocation of slots, giving qualifying carriers preferential access to 50% of the slot pool.

In ACL's view the requirement to give priority to the allocation of 50% of slots to new entrants is arbitrary, can lead to perverse slot allocation decisions, and is often inconsistent with the broader objectives of the Regulation to make 'efficient' use of scarce capacity at Europe's most congested airports.

The unthinking application of the new entrant rule can result in fragmented markets, ineffective competition, and inefficient use of slots by small capacity aircraft.

In ACL's experience the new entrant rule has tended to provide greatest assistance to carriers qualifying on the basis of Article 2b(i), i.e. with total slot holdings of less than 5 slots per day.

At Heathrow, which is a heavily congested airport where slots are in scarce supply, the rule has been most effective in helping carriers from outside the EU wishing to operate longhaul routes and/or routes where frequencies, and therefore slot requests, are limited by bilateral agreements.

At other coordinated airports in the UK the new entrant rule has given priority for access to slots to some no frills carriers, to start intra-Community routes, and to some longhaul carriers.

The Role of the Coordinator

ACL welcomes the enhanced role and responsibilities for coordinators assigned under the Regulation, in particular the responsibility to deal with slot misuse. Following an industry consultation in the UK both airports and airlines nominated ACL to be appointed as the

competent authority for operating the sanctions scheme for the UK based on the expertise, skills and pragmatism of the coordinator.

In ACL's view the role of the coordinator could be extended further, although it is important first to raise the general standards of coordination across the EU to meet the needs of the airlines and airports and to deliver the objectives of the Regulation more uniformly.

The Commission itself has a significant responsibility for monitoring and enforcing the implementation of the Regulation and raising the standards of coordination across the EU which, in ACL's view, should be given greater focus by the Commission.

As outlined above ACL does not see the role of the coordinator as responsible for determining or improving levels of competition but rather for making pragmatic judgements about the optimal use of scarce airport capacity and raising the standards of schedule coordination within the Community.

How have the Member States ensured that the coordinator is functionally separated from any single party?

In the UK ACL was established in 1992 as an independent, not for profit, company owned by a consortium of (currently) 11 UK airlines bound together by a Participation Agreement. These airlines and the 19 airports which ACL serves (30 'customers' in total) share the funding of the coordination services in the UK and Ireland.

Uniquely amongst the coordinators ACL also receives around 15% of its income from commercial activities designed to reduce the financial burden on the airlines or airports.

The Commission has, in the past, investigated the functional independence of EU coordinators from any single party and details of the current status of the coordinator for each country can be easily accessed via the web site of the EUACA.

Article 4(2)(b) of the Regulation is designed to ensure that coordinators have sufficient resources to guarantee the coordinators' financially independent status

In ACL's view the success of the Regulation cannot be measured simply in terms of the functional and financial independence between the coordinator and any single interested party.

The key performance criteria must be:

- the independence of each coordinator's **decision making processes**
- that the resources and funding are available to deliver a **high quality service** meeting customers' (airlines, airports and regulators) needs,
- that the coordinator operates a transparent service so that all airlines can have confidence in the quality of coordination and the independence of the decisions taken by the coordinator.
- that the coordinators data is used as the primary data source by airports (e.g. for passenger information displays) as this leads to conformity with the allocated slots and improved slot monitoring.

As can be seen from the EUACA web site there has been considerable progress in the functional independence of many of the coordinators in the EU although, in some countries, change has been slow and organisationally some coordinators still appear to be very dependent on influential third parties.

There is a clear perception amongst the airlines that in countries without fully independent coordinators that coordination is biased to support the national carrier although this is now increasingly an issue outside the EU than within it.

It has been evident from the progress made that in some countries the airlines may be reluctant to pay for high quality coordination services. It is ACL's view that until the issue of adequate funding of coordinators is addressed the coordination 'industry' will be slow to develop further.

How have the Member States ensured that the coordinator acts in a neutral, non-discriminatory and transparent way?

The airlines are in a better position than ACL to comment on the performance of other coordinators in the EU, however anecdotal evidence from many airlines who speak regularly to ACL indicate that in some EU countries there are significant problems with the transparency of scheduling data of some EU coordinators which should be addressed by the Commission.

In general complete transparency of schedule data leads to neutrality and non discrimination in the slot allocation process as the evidence of the coordinators slot allocation decisions are there for all to examine.

ACL is familiar with the systems and processes of many of the coordinators in the EU and there are clear examples of either inadequate investment in systems and processes to achieve the optimum levels of transparency or, where the tools exist, they are not used in the most transparent manner. There is clearly room for improvement.

The EUACA operates a 'combined database' holding coordinators data submitted by its members and is seeking to improve transparency through the development of this database and investment in a web front end to access the data. When this development is complete this should help to improve the transparency of the data though the funding of this industry development is proving to be challenging.

Currently not all coordinators in the EU submit their data to this database, which is accessible free of charge to all airlines.

One positive development in recent years is that a number of coordinators, either individually or in groups, now provide online access to their coordination data via online coordination systems which provides complete data transparency.

The Process of Slot Allocation

In what way have the provisions promoted and increased the efficient use of airport capacity?

Efficiency is not a defined term and therefore it is difficult for ACL to comment on whether the specific provisions of the Regulation have increased the efficiency with which airport capacity is used. A wide variety of factors at congested airports will affect the efficiency of use of capacity.

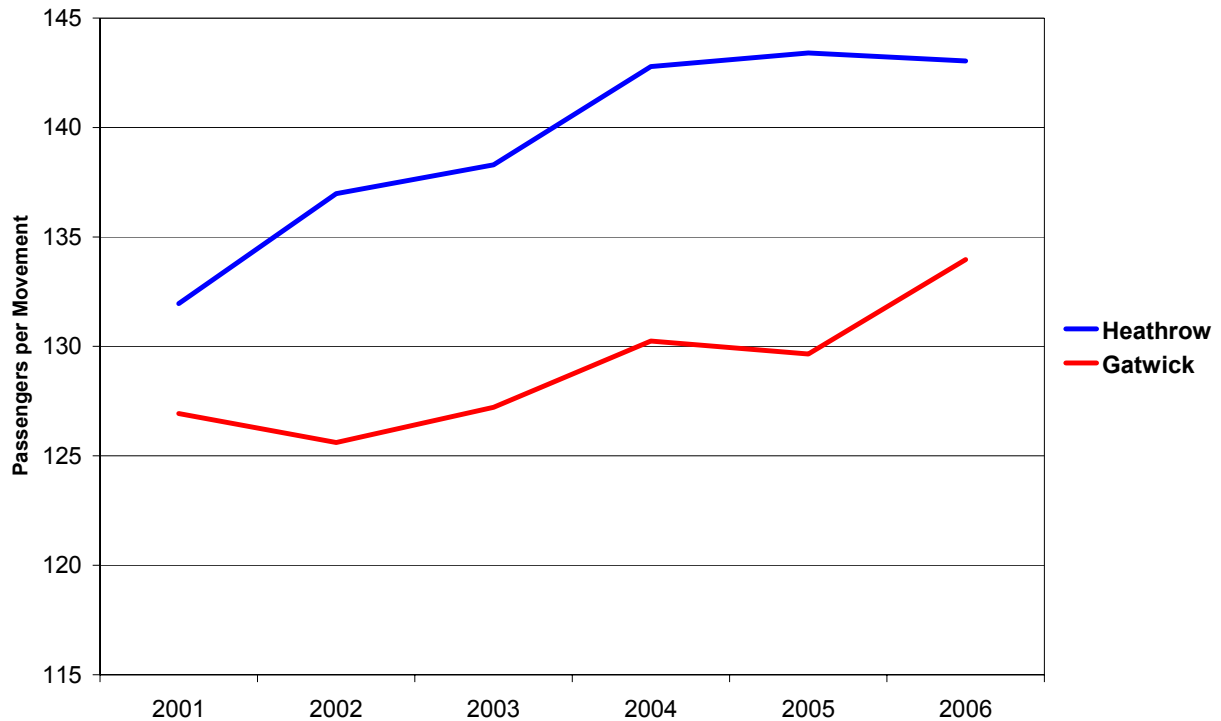
To date the Commission and the industry have not been able to develop an agreed set of measures which determine the efficiency with which slots are utilised as each of the stakeholders values the use of infrastructure differently.

As outlined above the changes to the new entrant rules do not necessarily promote the efficient use of scarce capacity – it depends upon how these rules are applied.

In general however, at UK airports, since the events of 2001, there has been a general trend of increases in average aircraft size which is one crude measure of the utilisation of airport capacity, though much of this is attributable to structural changes in the industry e.g. the demise

of Sabena and Swissair, rather than the influence of the provisions in the Regulation. See Figure 1.

Figure 1



At Heathrow and Gatwick airports there has been an active market in the secondary trading of slots which has also contributed to the increased efficiency of use of slots (expressed in Available Seat Kilometres per slot) as, in general, trading has resulted in small aircraft operating short routes being replaced by large aircraft operating longhaul routes. (See Mott Macdonald report)

There have been a number of changes to the process of slot allocation in Regulation 793/2004 which have increased the efficiency of use of airport capacity as follows:

- Article 2(k) increased the number of slots which must be operated in order to earn 'historic rights' for the operation of a series of slots. This has contributed marginally to the reduction of fragmentation of schedules at airports. At Gatwick local rules have also been introduced to redefine the length of a series of slots which must be operated to further improve the efficiency of use of capacity.
- Article 8(2) and the stricter 80/20 rule for charter airlines has probably improved the usage of slots marginally
- Article 10(4) narrows the definition of the circumstances which qualify as force majeure however there is still ambiguity around the interpretation of this rule so the EUACA has developed, in consultation with the airline community, a Recommended Practice to further define force majeure.
- Article 14 and greater enforcement of the allocated slots (penalties for misuse)

Slot Mobility

To what extent have the provisions with respect to new entrants encouraged new entrants to apply for slots under the new entrant rule?

As mentioned in ACL's reply to Question 2.7, the new entrant rule is poorly understood. There is also some evidence that the provisions of Article 8a(3) act as a disincentive to air carriers claiming new entrant status. This is not due to any *intention* to abuse the priority but a concern about loss of flexibility to respond to changes in the marketplace if slots are tied to a particular route.

ACL believes that the provisions of Article 8a(3) are a useful sanction against intentional misuse of the new entrant slots, but should be open to more flexible interpretation so that they do not act as an impediment for new or small air carriers seeking to grow at congested airports.

In some countries where there has been a significant use of the new entrant rule and where competition has increased e.g. Madrid, the main factor triggering the use of the rule has been a significant increase in capacity.

To what extent have the provisions with respect to new entrants encouraged new entrants to effectively use the slots for route development in a sustainable manner?

Those airlines which have been allocated slots under the new entrant provisions of the Regulation, e.g. primarily longhaul carriers at Heathrow, have in general continued with the services which they have started except where there has been a significant change in the marketplace.

Enforcement

To what extent have ATM authorities made use of the power to reject flight plans in case an air carrier intends to make use of an airport without having a slot?

Article 14(1) of the Regulation requires the rejection of air carriers flight plans if a slot has not been allocated to the airline by the coordinator. In the UK tentative discussions with the Air Traffic Service provider (NATS) has shown significant resistance to the objectives outlined in the Regulation due to their overriding mandatory safety and service delivery objective.

In most other Member States there is little support for integrating slot coordination and ATM data to deal with slot misuse in real time and at an operational level though this process is already in place in some countries e.g. Spain.

In ACL's view therefore controls over the discrepancies between slots and flight plans should, in general, be exercised retrospectively and not in real time.

In the UK, in certain limited circumstances related to the sanctions against slot misuse, the Air Traffic Service provider (NATS) is prepared to prevent a planned departure from operating without a slot, so long as it has not pushed back from the gate, when instructed to do so by the coordinator, though they are not prepared to consider interfering with the safe and orderly flow of arriving aircraft whether it has a slot or not.

Operating without a slot has been addressed in the UK by the implementation of an effective, proportionate and dissuasive sanctions scheme (Article 14(5)) of the Regulation which should have the effect of increasing conformity with the slots allocated by the coordinator without the need for the Air Traffic Service provider (NATS) to interfere with airborne aircraft.

As the Commission is aware the ATFM mandate to Eurocontrol includes provisions for the greater exchange of data between coordinators and Air Traffic Service providers and this issue will therefore continue to evolve through debate between the various stakeholders in this forum.

To what extent have slot coordinators made use of the power to withdraw slots from air carriers that repeatedly and intentionally operate air services outside the allocated slot times?

The withdrawal of slots from an air carrier under Article 14(4) of the Regulation is the ultimate sanction and can only realistically occur in narrowly defined circumstances without the risk of causing severe hardship to passengers and potentially severe economic penalties for airlines.

Therefore a more common scenario under Article 14(4) is for an air carrier which is guilty of repeated and intentional misuse to lose its 'rights' to claim the same slot in the next equivalent period i.e. to lose its historic status.

This retrospective option has been exercised on a number of occasions each season by ACL though it does not prevent ongoing misuse throughout the season.

Regarding the withdrawal of slots within the season a common scenario is where an air carrier has been allocated slots and has not put the flight on public sale by the time that the series is due to commence.

In such cases ACL, following a dialogue with the air carrier, would issue a single warning and then withdraw the slots within the season.

In only one case, since the introduction of Regulation 793/2004, has ACL decided, after exhausting all other options, to withdraw slots from an air carrier at Dublin airport which was on public sale and which was guilty of repeated and intentional misuse of slots in the congested hours. This action forced the airline to reconsider its position and it promptly rescheduled its service to operate in conformity with its allocated slot.

How did Member States introduce measures to deal with slot abuse?

Article 14.5 of EEC Regulation 95/93, as amended by Regulation 793/2004 requires all Member States to ensure that effective, proportionate and dissuasive sanctions, or equivalent measures, are available to deal with serious misuse of allocated slots.

On 13 July 2005 the UK Department for Transport (DfT) issued a consultation document to stakeholders in the aviation industry on the best means to introduce sanction mechanisms to control the misuse of slots at coordinated airports in the UK.

In December 2005 the DfT decided to appoint ACL, the Coordinator for all coordinated airports in the UK, to design and develop a draft sanctions scheme following input from the industry.

On 13 April 2006 the DfT published draft 'Misuse of Slots Rules' and 'Procedures and Guidelines', produced jointly by the DfT and ACL setting out the proposed basis of operation of the scheme. The DfT also published a draft Statutory Instrument to implement Article 14(5) of Regulation 793/2004 into UK law.

On 27 April 2006 the DfT and ACL held a seminar with industry representatives to discuss and clarify the draft papers circulated on 13 April 2006 and invited written comments on the draft proposals by 18 May 2006 so that the views of the industry could be taken into account.

Following consultation with stakeholders in the aviation industry, the Secretary of State for Transport adopted the Airports Slot Allocation Regulations 2006 (the UK Regulation), which took effect from 1st January 2007. UK Regulation 14 prohibits the repeated and intentional

misuse of allocated slots by air carriers. UK Regulation 18(1) requires the Coordinator to adopt an enforcement code to make provision for the manner in which the Coordinator will enforce UK Regulations 7, 15 and 16.

This Enforcement Code was adopted by the Coordinator to take effect on the same date, 1 January 2007 that the UK Regulations came into effect.

A copy of the Statutory Instrument and the Enforcement Code is available on the ACL web site at www.acl-uk.org.

Unfortunately the development and implementation of measures to deal with slot misuse vary enormously between the Member States which is very difficult for the airlines as there is no 'level playing field' and a lack of transparency. In ACL's view a consistent approach between the schemes and methodology used by coordinators in various countries is essential for the future.

Conclusion

To really understand how the new entrant rule works in practice across the EU a much more comprehensive study is necessary that includes analysis of instances where the rule has been used as the basis of major slot allocations, for example at Orly and Madrid.

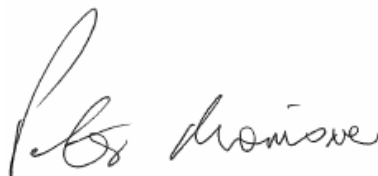
According to many studies published recently by the Commission and others the demand for air travel is likely to continue to outstrip the growth in airport capacity. During the next 10 years this will lead to an increasing number of EU airports becoming saturated/congested for much of the day.

Against this background it is essential that the Regulation continues to evolve to meet the changing needs of the aviation industry.

ACL would welcome the opportunity to discuss its views with the Commission in more detail before the Commission produces any further amendments to the Regulation.

ACL is happy for the contents of its response to be shared with interested parties.

Yours sincerely



Peter Morrisroe
Managing Director

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