

SLOT SELECTIVITY MEASURES AND THE INTERNATIONAL AVIATION SYSTEM

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Airneth Annual Conference

The Hague, 11-13 April 2007

OUTLINE

Selectivity measures

The international system

- Chicago Convention
- bilateral agreements

The IATA system

EC rules

Discussion and conclusions

- Chicago Convention
- bilateral agreements

ICAO CIRCULAR 283 OF 2001 ON THE ALLOCATION OF FLIGHT DEPARTURE AND ARRIVAL SLOTS AT INTERNATIONAL AIRPORTS

“States will have to take into account the legal framework provided by the Chicago Convention, air services agreements, regional and national slot allocation rules and existing voluntary mechanisms for managing insufficient airport capacity. However, the response will have to fit the situation of the individual airport(s) concerned and will therefore vary depending on the nature of the constraint and the means taken to overcome it”

SELECTIVITY

Traffic distribution rules (eg, as in UK – LHR/LGW)

Grandfather rights

Slot trading

Peak pricing

Environmental limits

Qualitative criteria (eg, scheduled before charter)

CHICAGO CONVENTION 1944 (1)

- Art 1** **Every State has complete and exclusive sovereignty over the airspace above its territory**
- Art 6** **No scheduled international air service may be operated over or into the territory of a contracting State, except with special permission and in accordance with the terms of such special permission**

CHICAGO CONVENTION 1944 (2)

- Art 15** Every airport open to public use by its national aircraft shall likewise, subject to Art 68, be open under uniform conditions to the aircraft of all the other contracting states
- Art 68** Each contracting State may, subject to the provisions of this Convention, designate the route to be followed within its territory by any international air service and the airports which any such service may use

CHICAGO CONVENTION 1944 (3)

Art 37 Each contracting State undertakes to collaborate in securing the highest practicable degree of uniformity in regulations, standards, procedures and organisation in relation to aircraft, personnel, airways and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation.

Annexes containing standards

Annex 14 on aerodromes is concerned only with technical/safety matters

BILATERAL AGREEMENTS (1)

Typical provisions

- **Each Contracting Party grants to the other Contracting Party the rights hereinafter specified for the purpose of operating international air services on the routes specified in the route schedule**
- **While operating an agreed service on a specified route, the designated airlines may make stops at the points specified in the route schedule for the purpose of taking on board and discharging passengers and cargo**
- **Each Contracting Party shall have the right to designate one or more airlines for the purpose of operating the agreed services on the specified routes, and on receipt of such a designation the other Contracting Party shall grant to the airline(s) designated appropriate operating authorisation. When an airline has been so designated and authorised it may begin to operate the agreed services**

BILATERAL AGREEMENTS (2)

There shall be fair and equal opportunity for the designated airlines of both Contracting Parties to operate the agreed services on the specified routes

Normally no provision on access to airports or slots

Route schedules normally refer to “points in” the Contracting Party or cities rather than airports

THE IATA WORLDWIDE SCHEDULING GUIDELINES SYSTEM

No legal force, unless incorporated into law (as to some extent by EC Reg 95/93)

Core is grandfather rights – ie, an airline is entitled to slots if it used them for at least 80% of the time in the previous equivalent season

Even where the WSG are not incorporated in law, the general law may impose some constraints in taking grandfather rights away from airlines

The WSG also permit slots to be exchanged between airlines

The WSG are neutral with regard to traffic rights given under bilaterals

NATIONAL RULES – THE EC

EC Regulation 95/93 (as amended by 793/2004)

- **Grandfather rights take precedence in slot allocation**
- **Slots may be exchanged between airlines**
- **English High Court in 1999 confirmed that money may accompany exchanges and that exchanges may be effectively artificial**
- **Governments may not intervene in the slot allocation process**

Art 8(2) EC Reg 2408/92 – “The exercise of traffic rights shall be subject to published Community, national, regional or local operational rules relating to ... the allocation of slots”

DISCUSSION AND CONCLUSIONS - CHICAGO CONVENTION

Art 37 Obligation of uniformity insufficiently specific

Art 68 States can direct airlines to particular airports

Art 15 Discrimination?

- **slot trading**
- **grandfather rights**
- **peak pricing**
- **environmental limits**
- **qualitative criteria**

Not if foreign aircraft are treated in the same way as locally-registered aircraft

DISCUSSION AND CONCLUSIONS - BILATERAL AGREEMENTS

Traffic rights normally refer to “points” or cities (not airports) – so traffic distribution rules are compatible

Are slots included with traffic rights?

Fair and equal opportunity clause may be relevant, although

- its origins appear to be related to capacity**
- it refers to the “agreed services” and “specified routes”, which will normally be in terms of a city (not airport) – but what is a city?**

Change in the system so as to take existing slots away from an airline without reasonable notice could possibly be challenged (eg, as being contrary to legitimate expectations)