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September 21, 2021

By Email & Overnight Delivery

Pete Buttigieg
Secretary of Transportation
United States Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Stephen Marshall Dickson
Administrator
Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591

Re: Capacity Constraints and Slot Usage at JFK and LaGuardia Airports

Secretary Buttigieg and Administrator Dickson,

We applaud the FAA's recent announcement that it will alleviate capacity constraints at Newark International Airport by expanding access to a low-cost carrier. We write to urge the Department of Transportation ("DOT") and the Federal Aviation Authority ("FAA") to take further action, consistent with the President's Executive Order directing the Department of Transportation to "consider measures to support airport development and increased capacity and improve airport congestion management, gate access, implementation of airport competition plans . . . and 'slot' administration".¹ Indeed, urgent action is needed to address slot management at John F. Kennedy International Airport ("JFK") and LaGuardia Airport ("LGA"). Doing so will bring much needed competition, leading to better service and lower prices to consumers and businesses throughout the region.

¹<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>

New York is home to two of the most capacity constrained airports in the country, JFK and LGA. JFK and LGA are Level 3 “slot-controlled” airports. As you know, slot control manages congestion by limiting the number of takeoffs and landings that airlines may make. Airlines hold slots indefinitely, such that the legacy airlines have a disproportionate share. Theoretically, airlines lose their slots if they are underutilized. But the utilization rule is weak and too easily evaded. As a result, capacity is underutilized, driving up prices and hurting consumers with lower quality service for their dollar. Further, this puts limits on the ability of smaller airlines to grow and bring the benefits of competition to consumers in the region.

To begin, the slot control system permits up to 20% of slots to be unused. Given that modern industry operates at high levels of efficiency, the rule should require higher usage. As the United States Government Accountability Office (“GAO”) has written:

The rules, . . . in effect, allow some existing airport capacity to go unused, and this capacity is therefore unavailable to other airlines because airlines are not required to schedule a flight for each of their slots, but instead are only required to use their slots 80 percent of the time.²

We understand that the FAA calculates the question of 80% usage on an aggregate basis – across all slots held by an airline – rather than on a slot by slot basis, as is done in other jurisdictions. This makes the rule toothless, particularly for large airlines.

Moreover, GAO found that “flights operated at slot controlled airports tend to be scheduled with smaller aircraft,” and that passengers at slot-controlled airports are more likely to fly on “aircraft with fewer than 100 seats [compared to] other like-sized airports that are not slot-controlled.” This happens because airlines – especially legacy airlines – recognize that releasing slots would facilitate new entry or enable existing competitors to compete more effectively. So, they hold onto their slots, even if that means not using them, shuffling them around, or using undersized aircraft just to satisfy the rule. This is anticompetitive. It is bad for consumers, bad for business, bad for workers, and bad for the regional economy in general.

Yet another issue is that there is a lack of transparency, in part due to insufficient available data. The FAA provides only limited information in its slot holder and operator reports, which are presented semiannually in outdated pdf publications.³ No information is given about slot trades, among other things, making it difficult for airports to assess the strength of competition in their regions. In contrast, London’s Gatwick airport, which is also a Level 3 slot-controlled airport, makes a wealth of downloadable data publicly available, including, among other things, information on slot trades.⁴ The result is that the New York airport slot-control system is unnecessarily shrouded in secrecy that does not benefit the public or the regional economy.

²Report to the Committee on Commerce, Science, and Transportation, U.S. Senate, *SLOT-CONTROLLED AIRPORTS: FAA’s Rules Could be Improved to Enhance Competition and Use of Available Capacity* (Sept. 2012), available at: <https://www.gao.gov/assets/gao-12-902.pdf>

³https://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/perf_analysis/slot_administration/data/

⁴<https://www.acl-uk.org/completed-slot-trades/>

Accordingly, the current slot-controlled airport system could be improved to enhance competition. We urge the FAA to consider the following steps, among others:

1. The 80% usage rule should be increased to prevent airlines from wasting capacity or withholding excess capacity from their competitors. Airlines should not be allowed to count empty seats or use smaller aircraft to comply. Compliance should be strictly enforced, and it should be determined on a single-slot basis, rather than in aggregate.
2. Slots should not be held indefinitely. Slot allowance should be presumed to be term limited, subject to renewal after review of competitive conditions by the DOT, FAA, and DOJ.
3. The FAA should modernize its data portal to include appropriate information, in real time. This transparency would promote competition, which would result in lower prices and higher quality. Enhanced transparency would also facilitate airport management.
4. The FAA should consider implementing the outstanding recommendations of the 2012 GAO report.

Again, we appreciate the FAA's recent action concerning Newark last week, and we hope that the FAA will act quickly to adopt these and other measures that will enable and enhance competition at all New York area airports, and other airports around the country.

Sincerely,



Letitia James
Attorney General of New York