

# ACI EUROPE WORKING PAPER underpinning the revision of Regulation 95/93

## Practices and Recommendations related to New Entrants

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### 1. INTRODUCTION

- 1.1. After the allocation of historic slots, any unallocated slots, new slots, or slots otherwise returned to the coordinator before the start of the season, are placed in a slot pool. To encourage competition and facilitate access to congested airports by more airlines, Article 10(6) of EU Regulation 95/93, henceforth referred to as the 'Slot Regulation', stipulates that a maximum of 50% of the slot pool is priority allocated to new entrants, unless there are insufficient applications (the 'new entrant rule').
- 1.2. Slots allocated to 'new entrants', as defined in Article 2(b) of the Slot Regulation, cannot be transferred to other carriers for two equivalent scheduling periods, or two years. Per a 2008 Commission Communication, the new entrant rule should be applied to slots allocated throughout the season, not just at initial coordination.
- 1.3. Despite its pro-competitive objectives, it is highly doubtful whether the new entrant rule has been successful at increasing competition and mitigating barriers to entry. Though the opening up of numerous new routes has been observed in recent years, many of which have been built up by LCCs such as easyJet and Ryanair, this has mostly been for other reasons than a well-functioning new entrant rule, for reasons described below.

### 2. PROBLEM DEFINITION

- 2.1. At most European airports, Steer (2011) has found that less than 50% of slots are allocated under the new entrant rule, partly due to a lack of requests that meet the current criteria, and partly due to a total lack of slots.
- 2.2. Available pool slots – if at all – for priority allocation to new entrants at the most congested airports are more likely to be off-peak and thus of limited commercial use to new entrants. At airports where there is an active secondary market, airlines are likely to seek to monetize slots through the secondary market instead of returning them to the pool. At these airports, the potential impact of the new entrant rule on market concentration is limited as the number of available slots is low.
- 2.3. Conversely, where slots are readily available through the pool, the application of the new entrant rule is more or less irrelevant, because at these airports airlines tend not to claim new entrant status even when they would be entitled to do so. It appears airlines do not want to be restricted in how they use the slots allocated to them (e.g. the prohibition to transfer new entrant slots for two consecutive years).<sup>1</sup>
- 2.4. Moreover, the current new entrant rule is susceptible to gaming practices by airline groups which operate several airline brands. An airline is defined by Regulation 1008/2008 as a holder of an operating license. Since the new entrant rule applies to individual airlines, it is possible for the smaller members of an airline group to obtain new entrant status, despite other members already having significant slot holdings. After two years, the slots may then be transferred to partner airlines.
- 2.5. Furthermore, the overall limit of 5% prevents airlines from using new entrant slots to grow into a position in which they can effectively challenge a main incumbent. For instance, a carrier with only 6% of the slots would not be able to obtain new entrant slots to further grow operations, despite the fact that the dominant carrier has a slot share of >50%. The airport system qualifier further prevents airlines from seeking new entrant status at one of a city's airports if it already has a presence at one of the city's other airports, although both airports may serve entirely different markets.

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<sup>1</sup> Steer Davies Gleave (2011).

- 2.6. Although there have been some successful services which have been launched as a result of the new entrant rule, for instance by easyJet, the new entrant rule has resulted in schedule fragmentation at congested airports and has not been successful at promoting sustainable competition. Instead, most major coordinated airports are dominated by a small number of incumbents with large shares of slots, while numerous other carriers have each been allocated small portions of slots, see also Mott MacDonald (2006).
- 2.7. In addition to the limited effects the new entrant rule has had on competition at European airports, increased schedule fragmentation caused by the new entrant rule may also undermine the effective use of scarce capacity. Steer (2011) analysis shows that the utilization of new entrant slots is significantly lower than the utilization of other slots. Also, where slots are priority allocated to new entrants, they are often returned to the pool after just one or several seasons.
- 2.8. In sum: the current new entrant rule, paired with the principle of historic precedence, makes it very difficult for new entrants to establish a competitive foothold and challenge the dominant position of incumbent airlines at most congested airports where slot mobility is low. Its scope is limited, particularly because of the rarity of capacity increases at European airports.
- 2.9. Nonetheless, this has not stopped the substantial overall growth of new LCC's, which has occurred largely without the assistance of the new entrant rule. Many LCCs have entered the market by other means. They have developed operations at secondary airports and have acquired slots through the secondary market, where applicable. Starkie (2008) even considers that the alternative ways LCCs have to acquire slots has made the preference given to new entrants in the slot allocation rules unnecessary for competition purposes.
- 2.10. Alternatively, local rules may be developed as an instrument to optimize capacity. Member States would have the possibility to opt out of the new entrant-rule and endorse local rules instead. A broader set of rules governing new entrants may avoid situations in which the effects of a strict application of the new entrant rule frustrates other objectives of the Slot Regulation, such as the most optimal use of scarce capacity.
- 2.11. It is worth noting that EU Regulation 2021/250, which incorporates temporary relief measures into the Slot Regulation in response to the COVID-19 crisis, includes a revised new entrant definition. This definition, first proposed by the European Commission in the 2011 proposal to revise the Slot Regulation, sets the maximum number of daily slots held by a new entrant at an airport at seven, or nine for a non-stop intra-EU service at an airport which at most two other carriers operate. It also excludes from new entrant status carriers, which together with their parent companies, their own subsidiaries or the subsidiaries of the parent company, hold more than 10% of the total slots allocated on the day in question at a particular airport. This will cease to apply once the temporary relief measures expire, normally as of the W22 season.

### **3. RECOMMENDATIONS**

- 3.1. ACI EUROPE urges the Commission to upgrade the priority assigned to new entrant requests by placing them ahead of change-to-historic requests to allow new entrants to have improved access to any available capacity, without unduly compromising the historic rights of incumbent airlines. The WASG already now considers change-to-historic and new entrant requests as equal, and increasing the priority of new entrants would be an important means of boosting competition at airports. For so long as new entrant and historic retiming requests are considered equal, the market priorities of the airport should be considered when deciding between requests.
- 3.2. In line with the 2011 proposal and temporary COVID relief measures, and in light of the continued consolidation in airline markets, ACI EUROPE proposes a modification of the new entrant definition to make it less restrictive and reduce fragmentation, by increasing the minimum number of slots which a new entrant may hold to at least nine. The existing limit of 5% of total slot holdings should be replaced with a limit of at least 10% across the entire parent group and joint venture partners, so as to prevent

abuse. Any slots should be effectively operated by the airlines to whom they are allocated. The 'airport system' restriction should be removed, in order to reflect the modern competitive airport landscape.

- 3.3. ACI EUROPE recommends to explore the application of the new entrant rule to vary by route, in order to more closely reflect the frequencies required for a route to be competitive. It should also be possible to differentiate thresholds between intra-Union and extra-Union services.
- 3.4. ACI EUROPE recommends to provide scope for the current EU-wide new entrant rule to be modified with local rules to increase competition and optimal capacity utilization, depending on the competitive dynamics of each airport. Privileges could be given to airlines operating key new routes to widen passengers' travel options, or to frequency increases on under-served routes, rather than continually increasing competition on existing routes. Local rules could also provide scope for a modification of the new entrant rule in allowing for e.g. 20% of available slots to be priority allocated to airlines other than the dominant carrier and its partners (where these hold in total >50% of the slots, whereas the other 30% gets priority allocated to new routes, for instance).