

ACI EUROPE WORKING PAPER – “OFF THE GROUND”

Report of the WS1 – Market Access – Handling of Airline Slots in case of Bankruptcy / Insolvency

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Recommendations to EU/EEA Member States and European Commission

1 INTRODUCTION

- 1.1 The COVID-19 pandemic is having a severe impact on European airlines, with many receiving financial assistance from Member States and their respective shareholders. The future remains uncertain and the likelihood of several airlines entering administration or insolvency in the coming months is high.
- 1.2 Council Regulation (EEC) no 95/93 on common rules for the allocation of slots at community airports does not fully cover the process in case of airline bankruptcy and importantly the timely release of slots.

2 PROBLEM DEFINITION

- 2.1 In the case of an airline entering administration or insolvency the licensing authority normally issues a notice to the airline to terminate its air operators' certificate (AOC). Normally the airline is served notice by the licensing authority for a defined period and then has an opportunity to appeal. Should there be an appeal by the airline then the appeal process can be subject to a court injunction and the timeframe for termination of the AOC is unknown.
- 2.2 During the notice and appeal periods the AOC is suspended, and the slots are held by the appointed administrator or liquidator. In the case of the Thomas Cook liquidation the airline continued to operate for a period to assist with the repatriation of passengers.
- 2.3 Article 2 (e) defines that the airline ceases to be entitled to its assigned slots once the operating license has been terminated. The administrator or liquidator can therefore hold the slots for a period of time following the issue of the notice by the licensing authority. Should an appeal be granted the timeline for slots hand-back becomes unknown and can be subjected to a protracted legal process, limiting the time available for airports to attract new carriers and rebuild connectivity.
- 2.4 Moreover, State policies on the applicable timelines in case of bankruptcy and insolvency form somewhat of a patchwork, especially outside the EU. This may leave the slot coordinator in ambiguity in case of a non-EU airline entering administration.
- 2.5 Should an airline fail, then this process will impact the airport's ability to rebuild connectivity, limit consumer choice and potentially increase airfares. Across the board, the omissions in Council Regulation (EEC) no 95/93 with regard to the handling of slots in case of airlines entering administration may act as a barrier to market access. The existing *lex lacunae* may lead to coordinators not being able to release potentially scarce airport capacity to other airlines.

3 PROBLEM SOLUTION

In an article published on LinkedIn on 21 November 2019 entitled “The necessity to revise the air carrier's licensing EU Regulation 1008/2008 in conjunction with the revision of EU95/93 on airport slots”, Eric Herbane, Managing Director, COHOR address these issues. The bullet points below quote from Eric Herbane's article. ACI EUROPE agrees that the following points should be considered and require

further discussion, however, we do not support lowering the usage rate threshold below 80% in the penultimate bullet point.

- a) “The license of an air carrier that ceases its operations due to financial problems should immediately and automatically be suspended. Coordinators should be able to temporarily reallocate these slots on an ad-hoc basis (without historic rights) to other carriers and particularly those offering “rescue flights” for possible stranded passengers.
- b) The operating license should be immediately revoked as a direct consequence when the decision to liquidate the undertaking becomes final.
- c) The EU Slot Regulation should require that coordinators take control of the slots of an air transport undertaking that goes into insolvency procedure until a decision is made on the fate of this undertaking or a decision is made to suspend or revoke the license. A reasonable deadline should be set by which if the fate of the undertaking in insolvency procedure is not decided, the license is suspended
The air carrier should be allowed to use its own slots if it is still able to operate but it should not be allowed to exchange or transfer them otherwise than under the provisions of EU95/93 Article 8a 1 (b) (iii) and when the total or partial take-over is authorized by the administrator appointed for the insolvency procedure.
- d) A temporary license should only grant a total waiver to the slot series use-it-or-lose-it rule for a limited period if the air carrier still has the possibility to operate. Then if after that period the carrier still holds a temporary license the carrier should be required to use its series of slots maybe with a lower than 80% usage target.
- e) Similarly, only historic slots that were operated by the carrier in the previous equivalent season should be subject to the waiver. New slots that were allocated for the season when the carrier's license becomes temporary should not be protected since they represent a growth that the carrier's economic situation is not permitting. Those slots should be withdrawn and reallocated.”

3.1 ACI EUROPE calls for a clear definition in Council Regulation (EEC) no 95/93 of what is a “reasonable deadline” for notice and appeal periods, since the insolvency procedures at court can be slow and therefore slots may be held by the coordinator for long periods of time.

3.2 ACI EUROPE recommends that slots should be returned to the coordinator no later than 60 days from the date that the licencing authority issues the notice to terminate the AOC.

3.3 ACI EUROPE recommends that in case an airline partial take over is authorized by the administrator of the procedure, a minimum set of requirements should be defined, in order to avoid a circumvention of Council Regulation (EEC) no 95/93, as per art Article 8a 1 (b) (iii), and potential inefficient capacity reallocation.

4 EXPECTED OUTCOME

4.1 Paragraphs 3.2 & 3.3 will allow for slots to be allocated to other parties and support the air transport sector recovery initiatives. During the suspension of the AOC, coordinators should be able to temporarily reallocate the slots in question on an ad-hoc basis to other carriers.

5 CONCLUSION

5.1 The European Commission is requested to produce guidelines on slots and insolvency procedures by 15 September 2020, with a view to set clear timelines. This would be supportive of air transport sector recovery initiatives and allow for potentially scarce capacity to be allocated to other carriers should an airline become insolvent.