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Sent by email

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Dear Ms Geraghty

RESPONSE OF ACL TO CONSULTATION PAPER CP2/2006

Airport Coordination Ltd (ACL) welcomes the opportunity to respond to the CAR's consultation paper CP2/2006 of 4 April 2006 on the introduction of sanctions under Article 14.5 of EU Regulation 95/93 (as amended).

ACL has some general comments and concerns about the consultation before dealing with the specific questions raised at the end of the consultation paper.

- It is the responsibility of all **air carriers** (as defined in EU Regulations), including general and business aviation, not just airlines, to utilise slots as allocated by the coordinator at a coordinated airport.
- The Commission understands the term 'equivalent measures' in Article 14.5 to mean the possibility of introducing administrative measures to discourage slot misuse. It goes on to propose a scheme of financial sanctions.

Based on its considerable experience in working with the industry to try to develop administrative sanctions at other coordinated airports to prevent the misuse of slots, ACL supports the use of financial sanction as the primary measure, because these are more capable of being 'tailored' to deal with slot misuse in a proportionate and dissuasive way than administrative sanctions.

In ACL's experience it is very difficult to design administrative sanctions which are compliant with community law and non-discriminatory. Such sanctions are also generally difficult to administer.

Any proposed scheme to discourage slot misuse, of which there are a number of types, should not rule out the introduction of administrative measures, however.

- The Commission lists a number of types of slot misuse, some of which relate directly to Article 14.5 and some of which do not.

In ACL's view it may be best to deal with types of misuse directly related to Article 14.5 initially, whilst leaving the option open to introduce sanctions for other types of misuse at a later stage.

- In ACL's view it is inappropriate to consider other stakeholders (airports or ATC) as the competent authority for determining if slot misuse is occurring as managing misuse is fundamental to the long term relationship between the coordinator and the air carrier and must be viewed in this context.

ACL agrees that both the airport and ATC may have a role in supporting the coordinator and, if appropriate, in enforcing the decisions made by the coordinator but should not have a primary role as this is not envisaged by the Regulation.

- The consultation appears to confuse the requirements of Article 14.5 of the Regulation with the requirements of Article 14.4.

Article 14.4, which may lead to the loss of status referred to in Article 8.2 (the air carrier's historic rights), is directly applicable by the coordinator and does not depend on the introduction of a scheme of proportionate and dissuasive sanctions under Article 14.5, although both articles deal with the same types of misuse.

In ACL's view the purpose of Article 14.5 is to allow member states to introduce a scheme of sanctions which can have a more immediate and dissuasive effect than Article 14.4.

Care should be taken in drawing too heavily on the experience of the other Member States listed in the consultation paper as, in some cases, the schemes have never been tested and some predate to amendment to Regulation 95/93 in 2004.

In response to the CAR's specific questions, ACL has the following comments:

Q1: What do respondents believe ought constitute repeated and intentional operation of air services at a time significantly different from the allocated slot?

The terms 'repeated' and 'intentional' in Article 14.5 of the Regulation are, in ACL's view, directly applicable i.e. they mean what they mean.

Repeated – In the UK this is taken to mean more than once on a particular scheduled service operated by that air carrier, and, in the case of ad hoc flights, more than once for a particular type of service (e.g. positioning flights to/from Dublin and another airport).

Intentional – It is sufficient to show from the circumstances, such as advertised flight times, that the carrier intended (planned) to land or take off an aircraft at or about the time that it did land or take off, if this is different from the allocated slot time.

Failure to use a slot (intentionally) may also potentially be an abuse of the coordination system.

Significant – Any difference between the intended (planned) landing or taking off time from the allocated slot time which breaches the coordination parameters (e.g. operating at a time when no slots are available) should be regarded as a significantly different time for the purpose of Article 14.5.

Q2: What do respondents believe constitutes prejudice to airport operations? How should this be measured or identified?

The coordination parameters set in accordance with Article 6 of the Regulation, following discussion with the Coordination Committee, take account of all relevant technical, operational and environmental factors at Dublin airport.

ACL is of the view that any breach of the agreed coordination parameters has the potential to cause 'prejudice to airport operations' in that the flight which is misusing the slot is operating at a time when a slot is not available for allocation (the declared capacity is fully utilised), i.e. there is a presumption of prejudice.

Practical administration of Article 14.5 requires the presumption of prejudice where an air carrier intentionally operates at a different time than the allocated slot (or without any slot allocated) in breach of these coordination parameters.

It is almost impossible to prove or demonstrate prejudice just as it is impossible for any carrier misusing slots to prove that no prejudice has been caused because, on the day, there are so many variables affecting airline and airport performance.

In ACL's view it is not necessary to define prejudice to airport operations in order to introduce a fair, reasonable, proportionate and dissuasive sanctions scheme.

Section 3.1 and 3.2 of the consultation therefore need to be reconsidered.

Q3: Do respondents agree that the Coordinator is best placed to decide if prejudice has occurred? Should the Coordinator consult with other parties at the airport before making this finding?

The Coordinator of Dublin Airport, is in the best position to identify services that are repeatedly and intentionally operating at a significantly different time or in a significantly different way than the allocated slot in breach of the declared coordination parameters.

The Coordinator should not be obliged to consult with other parties before making its decision, as this could unnecessarily delay the process of addressing and preventing further misuse, but should be open to any views expressed. The Coordinator will rely on information provided by others, such as data from the DAA or IAA on actual landing or take-off times, in determining whether an instance of slot misuse has occurred.

Q4: Should the Coordinators decision be subject to review? For example, by the Slot Coordination Committee or should the decision of the Coordinator be reviewed by a different body?

In order for the process of administering the sanctions scheme to have integrity and the trust of stakeholder, decisions should be open to an independent and non-judicial review requested by the air carrier affected by the Coordinator's decision.

Care should be taken to discourage ill founded reviews, perhaps by making the party requesting the review liable for the costs of the independent review if their appeal is not supported.

Q5: Do respondents feel that the proposed penalty per flight for non-compliance with the slot coordination process is appropriate? If not, suggested alternative penalties should be set out in replies.

Article 14.5 requires the introduction of 'proportionate' and 'dissuasive' sanctions.

The proposed scheme includes a 'flat rate' financial sanction of €5,000 for all types of 'certified' slot misuse.

In ACL's view it is unlikely that a flat rate would pass the objective tests of being both dissuasive and proportional. This rate may not dissuade some from misusing their slots (e.g. large aircraft) whilst at the same time it may be disproportionate for operations of a smaller aircraft on a thinner route.

ACL would recommend a flexible tariff in order to meet the objectives of the Regulation.

Q6: Do respondents believe it is appropriate to deal with collection of penalties in the proposed summary fashion before the District Court if necessary?

ACL does not have a view on this point.

Yours sincerely

A handwritten signature in black ink, appearing to read 'James Cole', written in a cursive style.

James Cole
Director of Coordination