

THE PORT AUTHORITY OF NY & NJ



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December 29, 1998

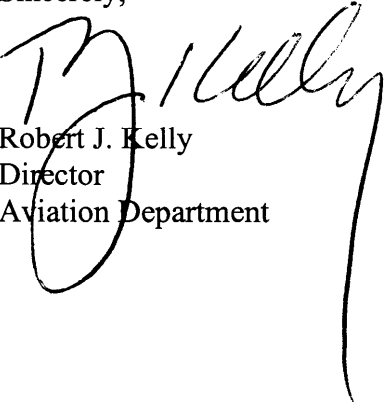
Docket Clerk
Docket No. OST-98-4025
Room PL-40 1
United States Department of Transportation
400 7th Street, SW
Washington, DC 20590

REF: Docket OST-98-4025; **Request for Public Comment on Competitive Issues**
Affecting the Domestic Airline Industry

Dear Sir/Madam:

On July 13, 1998, the Department of Transportation (DOT) and the Federal Aviation Administration (FAA) published a request for public comment on competitive issues affecting the domestic airline industry. The Port Authority of New York and New Jersey, operator of John F. Kennedy International, Newark International and LaGuardia Airports, hereby submits its comments in response to that request for your consideration.

Sincerely,


Robert J. Kelly
Director
Aviation Department

Att.

**Department of Transportation
Federal Aviation Administration
Washington, DC**

Docket OST-98-4025

**Request For Public Comment on Competitive Issues
Affecting the Domestic Airline Industry**

Background and Statement of Interest

The Port Authority of New York and New Jersey is pleased to have this opportunity to provide comments on airport practices and whether they affect competition among air carriers, particularly with regard to the Port Authority's airports. The Port Authority operates Newark International, John F. Kennedy International and LaGuardia Airports, a heliport and a general aviation reliever airport which together handle annually 84 million passengers and 2.8 million tons of cargo.

We are happy to report that there is currently a large diversity of air service in the region and we believe that a very competitive environment exists **among** the air carriers at our airports. In all, more than 100 air carriers offer service to a large number of domestic and international destinations making Port Authority airports one of the largest airport systems in the world.

Based on Port Authority management policies as well as existing conditions at our airports, we do not believe that there is a barrier to competition for carriers wishing to initiate new or additional air service. We understand that lack of airport facilities has apparently been identified as a barrier to entry at some airports and, while the Port Authority's airports do face some capacity constraints which we are aggressively working to overcome, we do not believe that new entrants are precluded access at our facilities. Significantly, in the last ten years, new service was initiated at our airports by many of the US certificated air carriers that have been authorized by the FAA since January 1, 1989. For example, at Kennedy Airport, service was initiated by Air South, Atlantic Coast Airlines, Atlas Air, Carnival Airlines, Gemini Air Cargo, Lake Airways, Miami Air International, Pan American, Polar Air Cargo, Spirit Airlines, Sun Jet International, and Viscount Air Service. At Newark Airport, service was initiated by American International Airways, Carnival Air Lines, Kitty Hawk Air Cargo, Kiwi International, Miami Air International, Midway, Myrtle Beach Express, Nations Air Express, North American, Pro Air, **SunJet**, Sun Pacific, Sky Trek, Spirit, Falcon Air, Private Jet, Leisure Air, Air South, Viscount and Jet Train. And at LaGuardia Airport, service was initiated by **Airtran** Airlines, Airtran Airways, American **TransAir**, Canadian Airlines International, Carnival, Frontier, **Markair**, Midway, Spirit and Frontier.

Following are the Port Authority's perspectives on the specific issues of interest to the Department of Transportation about airports and the competitive issues affecting the domestic airline industry.

(1) What is the exact nature of the airport (landside) constraints air carriers have encountered when attempting to enter a market or expand service?

Since deregulation, in order to provide a competitive air carrier environment, the Port Authority, like many other airport operators around the country, has had to aggressively increase airport capacity to keep pace with the dramatic increase in demand which our facilities have experienced. Significantly, since deregulation more than \$8 billion has been invested in our airports by both the Port Authority and its private tenant partners, primarily the airlines, in new, expanded, and modernized facilities. In fact at the current time Kennedy Airport is in the midst of a \$7.5 billion capital improvement plan. Additionally, \$3 billion is being spent to upgrade facilities at Newark and \$1 billion at LaGuardia Airports.

Looking at the regional airport system operated by the Port Authority, we do not believe that there is a terminal gate capacity problem for air carriers. For example, at LaGuardia, there is ample terminal space available at the Central Terminal Building which is controlled by the Port Authority and which has been made available to new entrants. At Kennedy, several terminal operators are actively looking for opportunities to handle and even sublease space to others. Such is the case currently at both the TWA domestic terminal and the International Air Terminal, the former International Arrivals Building. Further, the new Terminal One, which just opened, has additional international terminal capacity beyond the airport's immediate needs, which will be further supplemented when the International Air Terminal is completed in 2001. At Newark, the region's fastest growing airport, gate space is rapidly becoming constrained. However, two major carriers are developing terminal expansion plans, and the Port Authority can make gate space available in Terminals B-2 and B-3, the international facility, to both domestic and international carriers in the off-peak periods. Although it is true that our airports do not have space available in all terminals at all times, it is also true that on a regional basis, new and expanding carriers have some choices for accommodating their service needs.

One key constraint at our airports, however, is **airport access**. The success of our airports, coupled with population growth in the region, has resulted in roadway congestion and a lack of adequate ground access. In some cases, the time required to access the airports by ground can exceed the passengers flight time. For our airports to realize their effective capacity and continue to operate successfully, air passengers and airport employees must be able to travel to, from and within each of the airports reliably, quickly and safely. About 70% of the 84 million passengers using the three airports originate from or are destined for the region, by far the greatest percentage of O&D traffic for any airport system in the world. The airports also provide employment for nearly 65,000 people. As the number of air passengers increases, as employment expands to handle the activity, and as the roadways to the airports

becomes increasingly congested, ground access is the critical and limiting factor in maintaining the three airports as major gateways to the country and to the world. The Light Rail System being implemented for Kennedy Airport and the Monorail Extension being implemented at Newark Airport address the ground access problems at these two airports and allow Kennedy and Newark to realize their unrestricted **airside** capacity.

A further constraint on our region's airports is **airspace capacity**. It is significant to note that over the past decade, Port Authority airports have accommodated more aircraft operations, passengers and cargo than any other airport complex in the world. Over that same period, however, the region's three major airports have had the dubious distinction of being among the ten most delay-prone in the country, costing the region's airlines over \$200 million per year in terms of aircraft direct operating costs and resulting in 17 million annual passenger hours of delay. While weather is a contributor, other factors include airspace constraints, air traffic control staffing and equipment, and noise abatement procedures to minimize noise over communities surrounding our airports -- all of which require federal funding to address. The FAA, with financial support from Congress, is now boldly stepping up to meet the airspace challenge with a commitment to airspace redesign and expediting the construction of new air traffic control towers for LaGuardia and Newark. The Port Authority is also working closely with the FAA on this and on the Capacity Enhancement Task Force at our airports to identify and implement air traffic control procedural improvements, equipment upgrades, airfield modifications, and other measures to mitigate the discrepancy in airfield capacity between what exists and what is demanded by all of the aircraft using these facilities. We are heartened that the FAA has begun to give the NY/NJ metropolitan area the priority it deserves in terms of resource allocation.

Another potential constraint on competition is the **High Density Slot Rule** which exists at LaGuardia and Kennedy Airports. The initial intent of the HDR was to simply address concerns related to airspace congestion and air traffic control limitations. Over the years, however, the rule has been interpreted to encompass varying issues at each of the HDR airports, such as terminal and **landside** congestion, noise and small community air service needs.

The Port Authority has historically supported continuation of some sort of HDR at LaGuardia and Kennedy Airports because of the potential, in the absence of a rule, for unacceptable congestion due to the likelihood of parochial airline scheduling practices. More specifically, the Port Authority supports the efficient use of limited airport and **airside** resources that a slot represents. Before the rule was implemented, airways were near saturation and delays and cancellations were a regular way of doing business since overscheduling of flights was a common problem. Unfortunately, however, as the HDR has evolved, there is much evidence, in our view, that slots have been used in a manner that interferes with rationale airline business decisions and that slots pose a major barrier to entry by new carriers. The Port Authority believes that it may be appropriate to reconsider whether the HDR, which became effective in 1968, continues to serve its original purpose or needs to be modified.

(2) Have these constraints been so significant as to preclude entry at certain airports?

Landside and **airside** constraints at Port Authority airports have not heretofore restricted carriers from entering the market or impeded their growth. However, they have impacted the competitiveness and capacity of the region's airports and detracted from service levels.

On the **landside**, our airports face severe congestion on the access and terminal roadways. Access roadways are frequently operating at very low levels of service, and the deficiencies of the congested access system are **often** carried over to the on-airport **landside** roadway system. For example, particularly at Newark and Kennedy Airports, vehicles picking up and dropping off passengers create frontage congestion which extends out onto the main roadways and blocks circulation. A key deficiency that we are now working to solve with the construction of an extension of the Newark Airport monorail to the Northeast Corridor rail lines and with the construction of a light rail system at Kennedy Airport to Jamaica and Howard Beach is to connect our airports to one of the world's largest mass transportation systems.

Airside capacity limitations have led to delays and reduced levels of service. e , FAA statistics show that Newark, Kennedy and LaGuardia Airports suffer some of the worst delays in the country. For the first five months of 1998, Newark reported 76.5 delays per 1,000 operations, versus a nationwide average of 16 delays per 1,000 operations. During the same period, LaGuardia experienced 59 delays and Kennedy Airport had 43 delays per 1,000 operations.

The **High Density Slot Rule** is, however, a constraint which may preclude entry by some carriers. For example, there are documented complaints by small carriers that they can not enter the NY market because of the HDR even though all of the other airport infrastructure is available to provide new passenger service.

One of the specific problems we have with the HDR is that we do not believe that the buy/sell rule has achieved its purpose of efficiently allocating scarce resources. While slot trading is intended to be part of a pro-competitive policy, it does not ensure new carrier access. In practice, airlines that hold slots at an HDR airport will not make them available to competitors, except under short term lease or at exorbitant prices. In addition, although there is a use-it-or-lose-it clause whereby slots not used 85% of the time are forfeited to the FAA, a negligible number of slots have in fact been surrendered to the lottery reallocation process, and we understand all of these have been off-peak slots. For example, at LaGuardia, the total number of aircraft movements has remained relatively constant over the last 10 years but commuter movements, as a percent of the total, have increased from 17% to 22% (yet they account for only about 4% of the traffic) resulting in an inefficient use of slots.

(3) What is the exact nature and competitive significance of the complaints that have been raised against current airport practices?

With regard to Port Authority airports, we have received only one documented complaint about airport practices. KIWI Airlines complained about the alleged difficulty of obtaining access to Newark Airport. We believe that the complaint was unfounded and we submitted to DOT and FAA what we believe to be clear and demonstrable evidence that the Port Authority policies enhance competition at its airports. Based on the virtual absence of complaints, we can only assume that there is no connection between our airports' practices and the general industry-wide complaints that have been alleged.

(4) Do leasing practices and financing agreements at airports limit access and discourage entry?

Leasing practices and financing agreements at Port Authority airports do not limit access or discourage entry. Before any long-term lease is entered into by the Port Authority for its airport facilities, the Port Authority considers market factors such as the anticipated demand for a particular facility, the willingness and ability of tenants to undertake investments in the space and pursue maximum development of the leasehold, and the Port Authority's need to maintain some degree of control over space and utilization. For facilities where strong demand exists, leases are structured to assure that new entrant airlines can be accommodated and space utilization optimized. In considering airport leasing practices it is important to note the benefit to airports of the fact that established airlines have made substantial investments in the development of their airport gates and other facilities. Without the long-term lease commitment of the airlines, many airport projects that benefit all airlines in kind would not be possible.

(5) Are airport financing practices changing in ways that will allow airports to have greater control over how they allocate gates?

Actually, due to the trend towards privatization of airport facilities, airport control over the allocation of gates is somewhat decreasing. At the present time, of the approximate 400 gates and hardstands at the Port Authority's three major airports, only 12 gates in the LaGuardia Central Terminal Building and 15 gates at the Newark International facility are directly managed or controlled by the Port Authority. All of the remaining gates are leased to individual airlines. However, capacity and competition are prime considerations before such facilities are privatized.

(6) Have airport projects funded through passenger facility charges been successful in promoting competition? Why or why not?

The Port Authority of NY & NJ has dedicated its Passenger Facility Charges to funding ground access projects that are critical to both the capacity and competitiveness of the New

York region's airports. The projects for which funding is being provided include a light rail system at Kennedy Airport, a monorail system at Newark Airport connecting to the Northeast rail corridor and airport roadway improvements at Newark Airport. Approval by the FAA of these PFC applications was granted based upon evidence that these projects will enhance the capacity of the national transportation system and furnish opportunities for enhanced competition among air carriers.

Adequate ground access is one of the most important elements of our airports' ability to accommodate demand for service and enhance both capacity and competition. There is an erroneous tendency among the airlines to think narrowly about airport competition and capacity in terms of physical facilities that fall within an airport's boundaries such as roadways, terminals and **airside** system including the runways and taxiways. However, there is a critical interdependence between these elements of an airport's capacity and the critical element of capacity. If ground access is not funded at the same level that these other airport capital needs are, then these other elements of an airport's infrastructure can not be used effectively.

In the Environmental Impact Statements and PFC approvals that were done for these projects, FAA noted several of the benefits to be derived from construction of ground access improvements. For example, FAA noted that continued, reliable access from ultimate starting point to the ultimate destination is important to the continued viability of the air transportation system. FAA also noted that unacceptable levels of congestion and delays in groundside airport access cause travelers to incur needless costs and also diminish confidence in, and attractiveness of the air transportation system. In the final EIS and the Record of Decision approving the use of PFC funds for the Kennedy Airport Light Rail System, FAA also acknowledged that improving capacity at JFK required improvements to many activities, facilities and services, and went on to say that improved access to JFK is essential to both the preservation and enhancement of overall JFK capacity and service, the regional air transportation system in general, and the national air transportation system. Further, the EIS and PFC approval stated that improvements in the effectiveness and ease of inter-terminal transfers are projected to enhance competition among air carriers since passengers will be able to make these transfers more quickly and conveniently.

(7) What actions have airports taken to promote entry?

Since deregulation of the commercial airline industry, the Port Authority and other airport operators have, of necessity, become more active participants in control of capacity for airport facilities. Accordingly, in leases for terminal areas the Port Authority has included "use-it-or-lose-it" clauses, as well as requirements that carriers handle others if they have space available. In addition, the Port Authority has maintained some of its gates as "common-use" facilities. Additionally, at LaGuardia, in order to maximize capacity, we have implemented a no long-term lease policy. This has allowed us to offer gates to new entrants that were granted slot exemptions to the HDR at LaGuardia and also allows us to provide

access to the highly in demand international terminal at Newark. Also at Newark, all of the lessee airlines are required to handle a variety of regional, national, niche carriers and international airlines without gates under a covenant (referenced in their leases as Requesting Airlines at the Airport). This covenant requires them, on a space available basis, to handle any carrier that encounters difficulty finding facilities to operate at the airport.

Some of these policies and lease provisions were created at a time when deregulation created a demand for space beyond available capacity and there was a need to manage a scarce resource in a rapidly changing marketplace. Today, they provide a flexible back-drop at each of our airports to ensure that new entrants are afforded opportunities to compete.

(8) How do majority-in-interest agreements affect the competitive environment at airports?

There are no MII clauses in any Port Authority airport leases. It is our understanding, however, that there is evidence that MII clauses have been used by airlines at other airports in a way which affects the competitive environment.

(9) Is there a trend away from long-term exclusive use gate leases?

The trend at Port Authority airports, except for LaGuardia, has been toward longer-term leases, since many new terminals and gates are being financed and developed by the private sector which require long-term leases as security for the underlying debt instruments.

However, the trend toward long-term leases at our airports has been balanced, to the largest extent possible, with appropriate mechanisms to assure: equitable accommodation of new entrants; the provision of new service; and the efficient allocation of scarce airport resources. Long-term leases are appropriate where an airline can demonstrate sufficient anticipated demand for a particular facility, and is willing and able to undertake sizable investment commitments and pursue maximum development and modernization of a leasehold. Such leases generally return to the airport operator some control over the space and its utilization.

(10) Have airports reallocated gates away from incumbent carriers (“recapture” provisions) in ways that promote entry?

The Port Authority has reallocated gates to promote efficient use of facilities. United recently surrendered 9 underutilized gates at Newark Airport in Terminal A-2 which were made available for rental to accommodate other carriers’ needs. Air Canada, previously a sublessee of Continental, was afforded the opportunity to lease three gates directly from the Port Authority while USAir was given the opportunity to enlarge its leasehold to 4 gates to provide it with expansion opportunities. Last year TWA reassigned 3 gates to accommodate Continental’s expansion needs in Terminal A.



(11) Do airports involve themselves in monitoring subleasing/use agreements among air carriers?

The Port Authority does monitor subleasing/use agreements among air carriers. Port Authority airport leases prohibit the sale, conveyance, transfer, assignment, or sublease of airport premises including gates and support space without the express written consent of the airport operator. Before granting consent to a sublease or other transfer of airport premises, the Port Authority reviews the terms of such transfer to ensure that the terms are fair, reasonable and non-discriminatory. Further, leases place restrictions on permissible uses of such premises to ensure that they are not only fully utilized but that they are used for the purposes intended by the Port Authority.

(12) Do airports attempt to ensure that prices charged for sub-leased facilities or ancillary services are reasonable?

The Port Authority reviews the reasonableness of prices charged for subleased premises and for handling services provided as part of the consent process.

(13) Is there any evidence that established air carriers are transferring access to airport facilities among themselves in ways that affect competition?

At Port Authority airports, access and utilization of facilities can not be granted or transferred without the Port Authority's consent. Periodic audits are conducted to ensure that there are no unauthorized sub-uses. When a transfer does take place the Port Authority makes sure that small carriers are protected. For example, TWA recently transferred, with the Port Authority's consent, its leasehold interest in 3 of its 4 gates at Newark Airport, to Continental Airlines. As a condition of its consent to the assignment, the Port Authority required Continental to continue to handle Kiwi, Sun Jet and Colgan, three smaller new entrant carriers.

(14) Are there reasons to retain current airport practices even if they adversely affect competition?

At Port Authority airports and generally we do not believe that current airport practices are the cause of any airline industry anti-competitive issues; rather, airport practices have been part of the mix in ensuring that competition prevails. Airport practices follow the overarching objective of ensuring fair and reasonable access, without undue discrimination among carriers or classes of airport users. These policies and practices have grown out of deregulation which resulted in more carriers demanding access than there were facilities available. During this period, airports found their financial and operating responsibilities increasingly subject to external pressures of airline service decisions over which they had no control. For this reason, deregulation of the airlines required airports to significantly expand their own administrative and regulatory policies to ensure safe and efficient use of airport

facilities and to comply with the overall objectives of the Deregulation Act. Airports have not been stumbling blocks toward achieving competition. In fact, they have been advocates of competition through a flexible array of business policies like use-it-or-lose-it clauses and subleasing requirements. The one exception may be at airports which have airline leases containing Majority in Interest (MII) clauses which allow dominant carriers to control capital development at the airport.

It is interesting to note, however, that despite airport operators' success in promoting competition in managing their facilities, their prerogatives and administrative powers have been left in a somewhat ambiguous state. It is noteworthy that the Deregulation Act of 1978 focused little attention on the airports' role in what became a major restructuring of the industry. In fact, the Act contains only two sentences which give recognition that deregulation also depends on and impacts airports. One sentence calls on airports not to discriminate among users, an obligation which airports also must meet under its federal grant assurances. The other sentence states that deregulation does not limit the exercise of airport proprietary powers and rights.

If there has been any overall constraint on an airport's ability to enhance competition it has been the lack of funding for airport facilities. Airline competition is also threatened by the current attempt by airlines to control PFCs and airport rates and charges. Those airports with strong travel markets have had lots of access to debt capital, although facilities financed as such generally require long-term leases with established carriers. On the other hand, there are not currently sufficient sources of funds even for these airports for all of the capital needs that have been identified by the airport industry. In March 1998, a report was sent to Congress by the Government Accounting Office which analyzed the amounts of airport funding from every source over the last 15 years compared to capital needs. It showed that sources of funds amounted to only about 70% of needs. More troubling, debt was the most prevalent form of funding not Airport Improvement Program grants or Passenger Facility Charges. Clearly the objectives of airline competition can best be met if sufficient airport facilities are made available to accommodate all demand by incumbent and new entrant carriers at fair and reasonable costs.

DOT and FAA need to carefully examine the policies and regulations imposed on airports particularly with regard to PFCs and rates and charges to ensure that they don't impede an airport's ability to manage its affairs in ways which enhance competition and promote the public welfare.