



U.S. Department of Transportation
Docket Operations, West Building
Ground Floor, Room W12-140, Routing Symbol M-30
1200 New Jersey Avenue, SE
Washington, DC 20590

Re: Docket N. FAA 2008-0036, Policy Regarding Airport Rates and Charges

Dear Sir or Madam:

British Airways (BA) appreciates the opportunity to submit these comments regarding the proposed amendment to the Department of Transportation Policy Regarding the Establishment of Airport Rates and Charges.

BA is the largest United Kingdom air carrier and it operates scheduled service to 19 US destinations with approximately 40 daily frequencies to the United States.

As the largest operator at London Heathrow, widely recognized as among the world's most congested airports, BA has considerable experience in dealing with congestion issues. As the largest foreign air carrier at New York's John F. Kennedy International Airport (JFK), BA is also the only foreign carrier to operate a terminal (7) at JFK. BA also operates significant service to Newark International Airport (EWR).

British Airways shares the Department's objectives of promoting fair and open competition on the North Atlantic. Sufficient capacity, especially at the crucial New York gateway, is a prerequisite for fair and equitable competition and ultimately for realization of consumer benefits.

Access to sufficient capacity is also essential for implementation of the recently achieved Open Skies Agreement between the EU and the US. It is imperative that international carriers have access to sufficient capacity to enable the attainment of the goals of the recently achieved Open Skies agreement between the EU and the US.

It is especially important that international carriers have access to key US gateways such as JFK and EWR. US carriers can now access London Heathrow (LHR) and press reports indicate that all major carriers serving London have obtained access to LHR for the upcoming summer season. The demonstrated U.S. carrier ability to obtain access at LHR is a direct result of the vibrant secondary market for LHR slots. It is equally important that international carriers be able to access New York. The current congestion at JFK and EWR threatens the ability of EU carriers to implement new rights available pursuant to the EU-US Open Skies Agreement including the right to operate services directly to EU destinations outside their home market.

General

- As international demand, especially from Europe, is heavily centered on New York, it is essential that international carriers can access sufficient capacity to serve international markets.
- The fundamental issue of capacity creation and access has not been addressed in this proposal and we urge all possible measures to be taken to create new capacity at congested airports sufficient to address passenger demand.
- U.S., ICAO and international precedent dictates that airports charges must be (a) cost based; (b) reasonable and non-discriminatory; and (c) tied to services actually provided. Furthermore, any changes to charging regimes must be revenue neutral.
- These principles are designed to ensure that airports do not use their monopoly status to overcharge airlines for services rendered. Furthermore, they are embedded within U.S. air service agreements requiring that charges must be equitably apportioned among categories of users, including the recently signed EU-US Open Skies Agreement.

Three Primary Proposals

1. Two Part Landing Fees

- BA has consistently supported reducing or eliminating reliance on aircraft weight for purposes of determining airport and ATC charges. There is no direct relation between aircraft weight and the costs of providing airport and ATC services. Moreover, basing airport and ATC charges on aircraft weight encourages inefficient use of scarce airport capacity.

- Implementation of a fixed cost regime should be applied throughout the day rather than purely at peak periods so as to provide the maximum incentive to “up gauge” aircraft size.
- The prevalence of regional jets on trunk routes does not represent the best use of scarce capacity. Increasing the fixed costs of regional jet operations may encourage slots to be released as operators use larger aircraft to serve congested airports.
- The incentives resulting from implementation of a fixed cost per operation regime at LHR and the resulting incentive to up-gauge aircraft size has resulted in an increase in the average seats per aircraft from 183 in Summer 2002 to 201 in Summer 2008 ¹.
- Because most regional flights are operated at high frequency on small aircraft, possible increases in airport and ATC charges are unlikely to threaten elimination of service to a specific destination. That is especially true with respect to the many regional jet services operated between New York and larger markets such as Chicago, Toronto, Atlanta, and Boston.
- Many US airports are suffering from a lack of capacity, with no short term increase in runway capacity available. Incentives to increase aircraft size would encourage optimal use of scarce airport resources.
- Unlike international service at New York, which is effectively prohibited at airports such as La Guardia, regional services have flexibility to (a) operate to less congested New York Airports and/or (b) reduce frequency and use larger aircraft size.

2. Cost of Facilities Under Construction

- As stated in the Notice of Proposed Amendment to Policy Statement, ICAO regulation and U.S. law hold that airports must limit their charges to recovery of the cost of operating and maintaining the airfield. Accordingly the airports can only charge airlines for facilities “used and useful” to airlines.
- BA does not agree that the proposed amendment is a “modest departure” from the well-established used and useful requirement.

¹ - Source – Airport Coordination Limited - ‘Start of Season’ Scheduling Reports

- Pre-financing of airport investments is an invalid response to congestion issues because:
 - Pre-financing through user charges has been demonstrated to be more expensive for airlines, users and the wider economy.
 - Providing an upfront pool of money reduces management incentives for investment to be delivered in a cost-effective and timely manner.
 - Modern airports are able to access capital markets at a far lower cost than airlines.
 - Pre-financing through user charges is not applied in other transport sectors where private sector financing is available.

- The Notice acknowledges the need for checks to prevent airports from overcharging airlines for uncompleted construction and suggests that airports should consult ICAO Doc. 9562 *Airport Economic Manual* to guide them on accepted principles for charging users for projects under construction. We respectfully submit that DOT consult ICAO's Doc. 9082 "*Policies on Airport Charges*" before pursuing this pre-financing proposal.

- ICAO 9082/7 states clearly that "pre-funding should only be employed where aircraft operators will benefit by provision of needed, improved, or lower cost service, which could not otherwise be provided because regular sources of financing are insufficient and it is not possible or it is too costly to access capital markets."

- Further, ICAO Doc 9082 makes it clear that in the rare event pre-financing is acceptable, there must be "effective and transparent economic regulation" of the airports to ensure that the airlines are consulted on the projects, that there be performance auditing and benchmarking of the project and that there be sufficient accounting to ensure that aviation user charges remain solely for civil aviation purposes. Nothing in the Notice suggests that DOT will mandate this type of regulation on the airports.

- Airports in the United States do not have any difficulty obtaining financing for well-designed development projects and pre-financing will not result in additional capacity being created.

3. Cross Subsidization

- BA is concerned that the Notice would result in even greater concentration of market power. Airports are inherently monopolistic. Allowing airports within a region to act as an effective cartel would result in unacceptable distortion of the market and expansion of monopoly market power.

- The Notice implicitly assumes that additional investment is required at smaller airports. International service is centered on primary airports and is unsuited to secondary airports. Therefore, the Notice effectively asks international carriers to subsidize airport developments more suited to domestic service
- Investment decisions should be based on individual markets. If a market exists, funds will become available to serve it. Allowing infrastructure to be built where demand does not exist will reduce the ability to build infrastructure where needed (i.e. the primary airport may be undermined by the diversion of funds to a secondary location lacking proven demand).
- The Notice's proposal for cross subsidization of airports is yet another departure from existing and accepted international policy.
- Cross subsidization is not desirable because:
 - It undermines the ICAO principle that charges be cost-related.
 - Is anticompetitive because carriers serving major airports are required to subsidize carriers able and willing to operate at secondary markets.
 - It distorts competition by requiring airlines and passengers to pay for facilities and services that they do not use and will not benefit from.
 - It lessens transparency and cost efficiency and reduces incentives for effective investment.
- Subsidization of secondary airports via primary airport fees will likely result in competitive distortions between full service carriers (that normally serve primary hub airports) and low cost carriers (that normally serve underutilized secondary airports).
- As an international carrier, BA cannot operate to a number of secondary airports in the United States. Requiring BA and other international carriers to subsidize airports which they cannot access would appear to violate the prohibitions on discriminatory treatment established by Article 15 of the Chicago Convention and incorporated in subsequent bilateral and multilateral air service agreements.
- BA supports the existing requirement that airports engage in meaningful consultations in advance of increasing or establishing new fees. Unfortunately, the absence of a robust conflict resolution mechanism renders that requirement more aspirational than practical.

Conclusions

- The Notice does not address the fundamental issue of congestion and the creation of capacity. Cross subsidy and pre financing do not encourage new capacity creation.
- BA remains strongly opposed to congestion pricing by either the U.S. Government or local airport authorities. Congestion pricing will not reduce congestion. It will only drive up prices for airlines and their customers.
- BA is particularly concerned that DOT/FAA appears to be pursuing auction procedures for new capacity at JFK and EWR. Auction procedures and other congestion pricing experiments have never been demonstrated to effectively address congestion.
- At the very least, DOT/FAA should request appropriate Congressional authorization before implementing the fundamental policy change that would be reflected by adoption of any auction or congestion pricing procedures.

ACCORDINGLY, BA respectfully requests that:

1. First and foremost, DOT/FAA provide greater incentive for airports to create capacity at congested gateways.
2. Encourage political and economic investment in enhanced technology, infrastructure and procedures at congested airports and in congested airspace.
3. Encourage operation of larger aircraft at congested gateway airports.
4. Ensure that any charging regime provides for consistent charges throughout the entire operating day.
5. Eliminate any possibility that airports could cross subsidize.
6. Rely to the greatest extent possible on the time-tested procedures incorporated in the IATA Worldwide Scheduling Guidelines in addressing congestion at US gateway airports.

Thank you for your consideration of these comments in formulating the final policy with respect to the (a) management of current congestion and (b) effective elimination of congestion at US airports and New York in particular.

Yours sincerely

A handwritten signature in black ink that reads "Simon Cox." The signature is written in a cursive, flowing style.

Simon Cox
Procurement Manager – The Americas and Eurocontrol