European Commission's call for evidence on Fitness Check of EU airport legislation – ERA response

June 2024

ERA welcomes the opportunity to comment on the European Commission's call for evidence on a Fitness Check of EU airport legislation.

Slot Regulation No 95/93

Regional airlines, by definition, operate not only from smaller and regional airports – with good accessibility and a reasonable cost base, operating routes at frequencies and times that facilitate load factors – but also provide air connectivity with major hubs to link secondary destinations (including peripheral and remote regions) with the rest of Europe and the world, via interlining and/or codeshare agreements with network airlines.

For regional airlines, any change to the Slot Regulation No 95/93 is likely to be detrimental to regional connectivity. While the aim of a potential revision would be to make slot management more efficient in Europe**, it is important that this gain in efficiency does not disadvantage regional airlines operating smaller and regional aircraft**.

Preference is today given to large aircraft transporting more passengers and generating higher income for airports. Airports tend to favour larger aircraft with higher load factors, which means that for the same airport capacity, the infrastructure handles more passengers thus more revenue for the airport. Airports therefore tend favour network carriers or other large and profitable operators such as low-cost carriers. However, using a regional aircraft to connect peripheral and remote regions within Europe is more suitable and environmentally responsible than using another type of aircraft on such routes.

ERA believes that connectivity concerns are not sufficiently taken into account by the Slots Regulation No 95/93 in its current form. Protectionism by major carriers at their main hub must be avoided or at least reduced. A situation in which a network carrier chooses to exploit even the least profitable slots at its home airport to prevent other operators from entering the market must be avoided, in the interests of European connectivity, fair competition and environmentally friendly operation of airports and airlines.

It is difficult today for small airlines to expand their network outside their home country, to grow and to create competition for customers, whereas large carriers can come into small airports [i.e., the home base of regional airlines] at any time and without any entry barriers. In this respect, the current negotiations on the possible merger between ITA Airways and the Lufthansa Group, with the possibility that the slots that could potentially be freed up at Milano Linate Airport (LIN) will be distributed between low-cost carriers and network carriers, clearly show how difficult it is for regional airlines to access big hubs in Europe today. ERA believes that flexibility lies in competition and the ability of new entrants to penetrate the market.

Therefore, any future revision of the Slot Regulation No 95/93, if there is, should consider the protection of sufficient slots to guarantee regional connectivity by ensuring competition and access of regional airlines to larger hubs for the sake of regional connectivity and to avoid that airports discriminate amongst airlines.

Regional airlines are resilient, can adapt easily when there is an opportunity or a new challenge, and they clearly demonstrated that ability during the Covid-19 pandemic. They maintained a network during the Covid-19 crisis and used the flexibility of slot rules to support regional connectivity and growth, business

continuity and the movement of people fighting the pandemic as well as diplomatic travel and the carriage of essential equipment such as masks and vaccines.

Any future revision of the Slot Regulation No 95/93 must also ensure that regional and smaller aircraft are not penalised by the pricing of slots at EU major airports. In addition, the transfer of slots between airlines part of the same alliance is often an abuse of the system and a mean of dominating the market to the detriment of regional airlines. Some airlines also take slots from the new entrants' poll and then transfer them to the other airlines part of the same group which have lower priority. Auctioning of slots will have the same negative effect.

The Worldwide Airport Slot Guidelines (WASG) remain the internationally adopted approach to slot management and the objectives align with those of the European Commission: competition, resilience, fair and non-discriminatory treatment, and efficient use of scarce airport capacity in the interest of consumers. **Therefore, the EU should not isolate itself from global practices and standards on this topic but support the role of the WASB as the Industry Forum for slot policy development**.

In this respect, some elements of the Slot Regulation No 95/93 should be refreshed to align with the recently updated global industry standards to ensure the European Union is in line with the rest of the world on access and allocation policy: new entrant rules, slot performance monitoring and transparency of information. All of these areas were updated in 2019 /2020 and should be adopted by the EU policy makers given that airports, coordinators and airlines established and agreed on these improvements.

From a policy perspective, ERA firmly opposes increasing the slot use rate. The 80/20 rule is not the maximum level airlines use their slots; instead, it provides the necessary flexibility to manage unplanned events. **The minimum slot use threshold – which is currently set at 80% by both the current Slot Regulation No 95/93 and the WASG – is a reasonable compromise as it takes into account the proper use of the airport capacity and the need for airlines to cover their commercial and operational risks**.

In addition, the introduction of environmental measures into the Slot Regulation (such as the "green slots") will lead to complexity and arbitrary rules which are at odds with the key objective of equitable access and allocation of airport capacity in Europe set out in the regulation. This is a fully operational concern that should not be polluted by irrelevant political issues that add to complexity and inefficiency. The European Union has already other key instruments to address environmental concerns (including the Fit for 55 package currently under implementation) and other projects which are better focused and fit to address environmental concerns.

The ability of ground handling service providers to serve specific time slots or any other infrastructural or organisational restrictions is also not sufficiently taken into account.

Ground Handling Directive 96/67/EC

The role of the Ground Handling Directive 96/67/EC is to manage competition at airports in the ground handling sector. The introduction of such competition in the late 90s has benefited airlines (and indirectly consumers) by allowing a good level of service quality vs cost.

However, Directive 96/67/EC only lays down general principles for GH services within the European Union and the current lack of harmonisation is leading to market distortions and unfair competition. More harmonisation is therefore needed at EU level, and a regulation could be useful in this respect to avoid that each authority applies its own principles. Such a high-level approach creates an uncertain framework for airlines, because if conditions are uncertain, airlines have no idea what the future holds, i.e. whether GH providers will have sufficient staff and equipment to handle flights.

For instance, the tendering procedure must respect the principles set out in Directive 96/67/EC, but there is no legal expression of these principles in the current text. In addition, the absence of a clear timetable is a key issue as it can influence competition. Indeed, the time between the publication of the call for tenders, the award of the tender and the start of operations is too short and often leaves airlines with no choice but to choose the airport GH service provider: in such a short time it's not certain that the competitor will come forward as it may be short of equipment or staff and therefore the airline prefers to use the airport GH provider to secure its flights.

Furthermore, airports have the right with the Directive to provide ground-handling services without having to be selected through tender. This is also valid for the undertakings controlled by the airport (or controlling the airport) such as airport subsidiaries. This situation leads to competition distortion, as it gives a clear advantage to the airport GH provider when compared to its competitors. In addition, Directive 96/67/CE does not clearly state that the airport GH provider must comply as well with standard conditions and technical specifications, which private service providers must of course meet. Therefore, ERA believes that airports should be subject to the same tender procedures and conditions as all other ground handlers so that there is a fair and balanced procedure and to help control the number of ground handlers.

Moreover, there should be no further EU regulation of quality standards as these should form part of the agreement between airlines and their ground handlers. In addition, industry standards have already been developed through the IATA Safety Audit for Ground Operations program (ISAGO). Any safety and security standards are set internationally and nationally so no further regulation from the Directive is needed, it may duplicate or contradict existing legislation.

Finally, there is a need to clarify the scope of Directive 96/67/EC (i.e., what is covered: charter flights, scheduled flights, cargo and business aviation). The specific aspects of business aviation are not covered by the directive, and at many airports, private companies provide GH services for business aviation only. As these services are not covered by the directive, the airport is free to choose its GH service provider without going to tender.

Airport Charges Directive 2009/12/EC

As a general principle, ERA believes that airport charges must be justified, linked to efficient costs and set by an independent regulator following an effective and transparent consultation process between the airport and the airlines.

The current Airport Charges Directive 2009/12/EC (ACD) is inadequate and ineffective in protecting airports users and consumers from market power abuses by airports. As airport charges represent a significant part of the expenditures and such costs have increased in the last years, it is of uttermost importance to ensure a fair and transparent regulation when it comes to establishing airport charges.
A reform of the existing text focusing on transparency, consultation and regulation of airports market power is key to ensure an effective regulation and protect airport users from unfair competition.

Consultations between airports and airlines failed for two main reasons: inadequate transposal of the directive into national law and the lack of clarity on consultations in the original text. In this respect, airlines have reported situations where airports have not carried out meaningful consultations on service quality, investment, profitability and a reasonable return for the airport. Moreover, article 6(2) of the ACD leaves room for an interpretation according to which consultations are not necessary as long as airport charges remain unchanged, which prevents airlines from requesting a reduction in charges despite a reduction in traffic or in the efficiency of airport services. **It is therefore key that the future revision of the ACD guarantees an effective bilateral consultation process between airports and their users**.

The lack of transparency is threatening the effectiveness of consultations as mentioned above, but it is even trickier when it comes to establishing charges. As a matter of fact, airports often present charges without detailing the costs, especially when they operate under a hybrid or dual till system.

The single till is an effective way of preventing the abuse of market power by airports. Under this system, profits from non-aeronautical activities would be deducted from the revenues required by airports for aeronautical services in order to internalise the externalities that potentially exist on both sides of the market, treating the airport as a single commercial entity. It would also make it possible to allocate costs and investments in a more transparent way, thus guaranteeing appropriate economic regulation.
Other measures such as regulating the passenger fee, applying profit cap or even monitoring the Weighted Average Cost of Capital (WACC) as suggested by the Thessaloniki Forum of Airport Charges have not provided sufficient clarity. Only the visibility of all expenditure, charges and costs on a single till would guarantee the transparency required for a fair market and avoid abuses of a dominant position by airports.

In order to facilitate adequate competition and a level playing field between airports, airlines and other service providers, the ACD should recognise the substantial differences between airports in Europe and therefore avoid the introduction of horizontal regulations because of the different nature of different facilities. In this respect, a financial and regulatory support mechanism upon request would be more effective, rather establishing horizontal regulations that apply to all stakeholders.

The arguments aforementioned highlight the monopolistic situation, and thus the market power that airports exercise over their users through excessive charges, ineffective consultations, or scarce quality of service. An economic regulation of airport with significant market power is therefore required to balance the market and ensure the competitiveness of European airlines.