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Committee on Transportation and Infrastructure's
Subcommittee on Aviation
United States House of Representatives

May 6, 2008

Mr. Chairman, distinguished Members of the Subcommittee.

My name is Douglas Lavin. I am the Regional Vice President for North America for the International Air Transport Association (IATA).

IATA represents 230 carriers engaged in scheduled international transportation of passengers, mail and cargo by air. 71 of those airlines fly into and out of New York area airports on a scheduled basis. All of the major U.S. network carriers are members of IATA.

IATA appreciates the opportunity to brief the Subcommittee on IATA's position on the proposal by the U.S. Department of Transportation's Federal Aviation Administration to manage congestion at New York Area airports. IATA places a high priority on the effective management of these airports because of the direct impact congestion has on our members that fly into and out of the region as well as the secondary impact New York congestion has on operations across the U.S. and around the world.

Since September 2007, DOT and the FAA have focused considerable time and resources in an effort to address congestion in the New York region. Likewise, domestic and international airlines, domestic airports and the associations representing them have made a tremendous investment of time and resources to identify and promote solutions to this challenge on an expedited basis.

Unfortunately, IATA's domestic and foreign member airlines have been uniformly disappointed with the efforts to date by DOT on this important task. Rather than focusing its limited resources on increasing capacity at these gateway airports, DOT, with the support of the White House, has spent inordinate amounts of time attempting to implement so-called "market mechanisms" to limit carriers' access to New York airports.

A review of DOT activities in this regard over the past 9 months is instructive:

A Short History of DOT's Efforts to Address Congestion in New York

In September 2007, President Bush and Secretary Peters' announced their intention to take steps to address unacceptable congestion at New York airports. In the short term, DOT designated Newark and JFK as congested airports, and subsequently implemented a temporary cap and the allocation of slots roughly following the principles of the Worldwide Scheduling Guidelines (WSG), an internationally recognized set of standards to manage scarce airport resources. They also worked with the Department of Defense to open restricted airspace during peak holiday periods. Finally, they created the Aviation Rulemaking Committee (ARC), made up of DOT officials and representatives from domestic and foreign airlines and the New York Port Authority, to advise Secretary Peters on how to address NY congestion.

From September to December 2007, the ARC met on a weekly basis to identify short and longer-term solutions to congestion at New York area airports. Five working groups were established to study and report back to the Secretary on such options as operational and infrastructure improvements, the use of so-called " market mechanisms" (e.g. auctions/congestion pricing), gate utilization, priority air traffic preferences and the WSG and other "administrative options." In the end, the large majority of the airlines participating and the Port Authority made it clear to Secretary Peters that:

- FAA and DOT need to place a high priority on increasing capacity at New York airports through the expedited implementation of NextGen technologies and procedures as well as the New York Airspace Redesign;
- Congestion pricing and auctions are not effective means of either addressing congestion or allocating scare resources; and
- While operational and infrastructure improvements are being made, DOT should manage congestion within the general framework of the WSG

Despite this clear and unequivocal guidance, DOT announced in January 2008 that it intended to lease any new capacity that came on line at JFK via an auction process. It announced an identical approach for Newark in March 2008. Equally surprising given the ARC consensus against congestion pricing, DOT announced in January 2008 proposed amendments to the DOT 1996 Policy Regarding Rates and Charges that would in effect give airports the ability to use pricing to manage congestion under very broadly defined circumstances. DOT acknowledged that this was their best opportunity to impose congestion pricing without having to go to the Congress for authority to in effect impose taxes. [1]IATA strongly protested this action as a contravention of U.S. law, ICAO policy

[1] Under Article 1 of the Constitution, Congress is the "sole organ for levying taxes." National Cable Television Association v. United States, 415 U.S. 336, 340 (1974). The Supreme Court has recognized that assessments intended to " discourage [an] activity . . . are in the nature of 'taxes' which under our constitutional regime are traditionally levied by Congress." Id. at 341. Congestion pricing are classic taxes because these measures are designed to discourage

and international practice that airport charges must be revenue neutral, cost based and tied to services actually provided to airlines. The industry is now waiting for what we fear will be a final DOT rule implementing this illegal pricing scheme.

Finally, on April 17, 2008, DOT issued a Supplemental Notice of Proposed Rulemaking (SNRPM) extending caps at LaGuardia through 2019, followed by a May 16, 2008 Notice of Proposed Rulemaking (NPRM) doing the same at Newark and JFK. Rather than implementing the WSG to manage these airports, DOT argued that U.S. sovereignty over and control of the airspace gives it a property interest in the slots at congested airports. DOT proposes to lease the slots at these airports for a period of ten years. More troubling, DOT proposes to withdraw a significant number of slots from airlines operating at the three airports and auction them off to the highest bidder as a means to increase competition. IATA considers this yet another example of DOT seeking to conduct economics experiments with New York at a time when its focus should be on managing existing congestion and undertaking urgent efforts to expand capacity at these three airports.

Discussion

Since September 2007, DOT has set forth three overall goals for addressing congestion in New York: reduce congestion, allocate scarce airport resources and minimize disruption associated with implementing any suggested improvements. [2] It is useful to review DOT's progress in regard to all three goals since September 2007:

1. Reduce Congestion

The most effective step DOT has taken over the past nine months to address congestion in New York is to designate Newark and JFK as Level Three airports, which resulted in temporary cap on operations, the designation of an FAA coordinator, and the holding of schedules reduction meetings under the broad terms of the WSG. IATA supported DOT's actions in this regard as long as these measures were accompanied by a renewed commitment to increase capacity at the region's airports. To that end, the ARC made 77 recommendations on ways to increase capacity over the short, medium and long term. The ARC also recommended that DOT appoint a "New York Czar" to oversee rapid deployment of these operational and infrastructure improvements.

IATA has been supportive of the work the FAA has done since September 2007 to increase capacity at Newark, JFK and LaGuardia airports through operational

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takeoffs and landings during peak hours by making operations during those times more expensive. Congress may delegate its taxing authority but it must be "clearly delineated."

[2] NY ARC Report, December 13, 2007, page 1

and infrastructure improvements in the region. The ARC identified 27 short-term initiatives to improve delays by implementing available technologies and/or by modernizing outdated policies and procedures. The FAA agreed to address 17 of these initiatives in the short term. While 14 of the original 17 initiatives are complete as of June 1, the remaining three items are delayed due to lack of internal support and likely not to be completed in 2008. Overall, 60% of the 77 ARC recommendations are expected to be completed by the end of 2008. IATA is also pleased with the appointment of Marie Kennington-Gardiner to the position of NY Area Integration Office Director (NY Czar) and hope that the Congress, the FAA and its bureaucracy provides her with the resources and support she needs to address this important task. While much difficult work remains, we believe that the continued focus of the FAA on increasing capacity is the best opportunity to address congestion in New York in the short and long term.

2. Allocation of Scarce Resources

While the FAA has made progress in increasing capacity, DOT has spent the last nine months devising new and untested “market mechanisms” to limit carrier access and, more recently, increase competition at New York airports. The DOT suggests that “simply imposing a cap and then doing nothing to ensure that there are competitive market forces and actual and potential competition is unacceptable.”[3]

First, one has to challenge DOT on their assumption that a cap alone would hurt competition at JFK and Newark. JFK was capped from 1969 to 2006 under the High Density Rule (HDR) and Newark has been significantly constrained for some time. Today, the two airports currently have a combined 1,142 daily flights operated by more than 100 U.S. and foreign airlines. 78 airlines at JFK and 58 airlines at Newark operate non-stop flights to 159 and 164 cities around the world respectively. It is anticipated that the majority of these 100 airlines would continue to operate at these airports whether or not a cap is in place. Slot auctions and congestion pricing cannot be justified as needed to increase competition at these airports.

Further, IATA and its member airlines, along with the Port Authority, the ATA and non-IATA members serving the New York market, have consistently argued that DOT should utilize the Worldwide Scheduling Guidelines to manage the limited resources at these key airports. The WSG was established more than 60 years ago specifically to serve as a comprehensive set of guidelines for the “allocation of scarce resources on a fair, transparent and non-discriminatory basis”. Today, the WSG is utilized at 140 congested airports worldwide, including at Chicago’s O’Hare Airport, to manage the scarce airport resource through the establishment of slots, which permit take-off or landing during specified time periods. Slot

[3] 73 Fed Reg. 29630 (May 21, 2008).

allocation under the WSG is based on “historical precedence,” wherein a carrier that operates a slot on a consistent basis during the previous season is entitled to assignment of those slots again in the subsequent season. By following this approach, the WSG enables consumers to gain the benefits of regularity of services over time. It also enables airlines to reap the benefits of their investments in developing new routes and/or increased frequencies. Slot allocation is conducted twice a year on a global basis at IATA facilitated meetings under the direction of independent airport coordinators appointed by the respective governments responsible for the particular airports.

DOT officials have argued that the WSG is not an effective way to fairly allocate a scare resource as it rewards airline incumbents at the expense of new entrants. DOT has also argued that implementation of the WSG would in effect result in the incumbent airlines having a property right in the slots at the New York airports, contrary to their belief that the slots are owned by the U.S. Government. While DOT acknowledges that airlines have made multi-million dollar investments to support their operations, they have argued that the “historic precedence” in effect grants airlines valuable government property without compensation.

To the contrary, 60 years of experience around the world has demonstrated that the WSG effectively manages a scarce resource while allowing for meaningful competition. Under the WSG, carriers who do not operate slots at least 80% of the time during the season for which they were allocated are no longer entitled to historic preference for those slots during the next scheduling season. Those slots not allocated based on historical performance are placed in a “slot pool,” 50% of which are set aside for new entrants (defined as carriers holding less than four slots a day at the airport). Further, the WSG establishes several additional criteria that should be considered by the slot coordinator when allocating slots from the slot pool, including encouraging competition, allowing for a mix of operations between short and long haul and consideration of the needs of the traveling public.

During the ARC process, some limited incumbents seeking additional slots at Newark and JFK during congested hours argued that the WSG definition of new entrant, combined with the limited number of slots that become available each year via the “use or lose” provisions make it impossible for new entrants to gain meaningful access to congested airports.

It is interesting to note that DOT dismissed these arguments when denying Virgin America’s request that 30 slots be set-aside for them at JFK as part of the cap implementation process. DOT pointed out that even with a cap there is ample opportunity to allow limited incumbents increased access to the congested airport:

> All carriers will have an opportunity to acquire and to retime operations at JFK while this Order is in effect. Under this Order, all carriers have the opportunity to trade with others for Operating Authorizations at times that are more desirable to them. In addition, all U.S. and foreign carriers have the opportunity to lease Operating Authorizations from other carriers for the duration of this Order. [4]

DOT's argument in this regard is reflective of experiences at other congested airports around the world. For example, London Heathrow Airport (LHR) has been operating under EU Slot Regulation since 1993 (based on the WSG). Slot coordination has helped allocate scarce capacity while allowing for increased competition via the WSG "use or lose" provision as well as secondary trading. For example, over the last five years, LHR added 25 new entrants despite this cap, including Continental Airlines, Northwest Airlines, U.S. Airways and Delta, which all gained access via secondary trading following the revised U.S. –EU Air Services Agreement.

Given this experience, we question DOT's belief that the WSG as currently configured does not allow for effective competition at congested airports. However, if that concern remains, it is important to note that there are provisions in the WSG to allow governments to institute "local rules" to address particular concerns that they do not believe are adequately addressed by the WSG principles. For example, DOT has the option of implementing a local rule to foster a secondary market, as called for by DOT in their most recent NPRM. DOT could also expand the definition of a new entrant to allow for greater access for smaller carriers to the slot pool. While implementation of local rules diminishes the strength of the WSG as a global scheduling standard, they are much preferable to governments creating their own unilateral system to allocate congested resources, as is now being proposed by DOT in New York.

3. Minimizing disruption associated with implementing suggestions

With 74 IATA members flying into and out of the New York Region and accounting for the majority of services offered, we have a significant interest in the implementation of effective management tools at these airports. However, equally importantly, we are concerned about the disruption the DOT proposals could cause to the global aviation system, particularly in the international context. There are four areas of significant concern in this regard.

First, while New York airports are critical in their own right, it is important to recognize that Newark and JFK serve as important hubs in an overall international aviation system. To put it in simple terms, a departure at JFK is an arrival at London or Paris or Beijing and potentially a connection beyond those airports. An efficient global aviation system has as its basis common rules and

[4] 73 Fed Reg. 3514 (January 18, 2008)

regulations (such as the WSG) that ensure the seamless operation of hundreds of carriers at thousands of airports across 24 time zones. Throughout DOT's consideration of ways to address congestion at airports, there has been a lack of appreciation for the impact unilateral U.S. "market mechanism" experiments may have on what are by definition complex and interconnected international operations. This includes both the slot confiscation proposed for the New York airports as well as the proposed changes to the DOT rates and charges policy that would serve to encourage airports to manage congestion through pricing mechanisms. DOT's theories to the contrary, airlines may send regional jets during congested hours not to cause delays, but instead to provide feed from local communities to European flights that have only limited departure windows. Using pricing and auctions to change that dynamic will impact large and small communities both here and around the world. Disrupted operations in the name of economics experiments will not serve the public good.

Second, both the congestion pricing and slot confiscation proposals raise the possibility of limiting the growth of international carriers at New York airports. DOT's proposal as drafted would have only a limited short-term impact on foreign carrier operations into New York. However, it is safe to assume that over the 10-year life of this proposed rule, foreign airport operations would be constrained by these provisions. This raises implications for existing bilateral aviation agreements between the United States and other countries where certain access is guaranteed and growth is anticipated.

Third, IATA is concerned about the precedent that the DOT's pursuit of market mechanisms would set for foreign governments. Up until DOT's pricing fixation, airports and governments around the world have been constrained from pursuing congestion pricing and slot auctions because of accepted ICAO and international law that primarily restrict monopoly pricing of airport access to actual costs incurred. The few efforts to establish congestion pricing mechanisms at large airports have been successfully challenged on the basis of discrimination against classes of airlines (including a U.S. Government challenge to proposed congestion pricing at Heathrow). U.S. and foreign carriers have been fortunate that these policies and successful legal challenges have prevented an opening of a "Pandora's Box" of charges and auctions by governments seeking opportunities to raise new revenue from airlines and airports.

Unfortunately, DOT's pursuit of market mechanisms has already served to signal a loosening of accepted international constraints on congestion pricing. For example, the Brazilian aviation authorities (ANAC) recently proposed to increase parking fees at Sao Paulo International Airport on U.S. and other carriers that have long layovers at the airport in an effort to redirect those planes to other airports. This would result in an increase in fees paid by U.S. carriers and others of between $15,000 and $90,000 per flight per day. We do not believe ANAC would have pursued this pricing scheme but for the U.S. Government's signal to the international community that congestion pricing is acceptable. We understand that other governments are now also considering implementing congestion-pricing schemes. Further, the DOT NPRM offers industry some assurances that the funds raised under these pricing schemes would be used for some yet to be defined capacity building projects. While we have doubts about DOT's commitment in this regard, we are very concerned that other governments will simply use funds raised to address general budget shortfalls.

Finally, one cannot minimize the negative impact these provisions would have on the airline industry and its passengers. Slot auctions and congestion pricing will conservatively lead to hundreds of million dollars in additional costs for incumbent airlines. Slot auctions will in effect penalize airlines that have already made significant investments in their operations at these airports by requiring them to pay for the privilege a second time. Airlines are not in a position to accept this additional financial burden. As such, these costs will have to be borne by our passengers in the form of increased ticket prices and fewer flights. To be clear, auctions and congestion pricing will have no impact on delays at New York area airports. Instead, passengers will face further inconvenience, increased cost and decreased service at a time when we can all afford it the least.

Conclusion

Airlines are today facing the challenge of remaining viable business entities in a market that has seen a tripling of oil prices since 2006 and a two-fold increase in the last year alone. At currently predicted fuel prices, IATA airlines could face an additional financial burden of $99 billion over the next 12 months compared to 2007. A total of 24 airlines have ceased operations or entered into bankruptcy protection in the past five months. Many more airlines will not survive the New Year. Quite simply, airlines are facing a crises that is beyond that which they experienced post 9/11.

The leaders of the world's airlines met in Istanbul on June 2-3, 2008 as part of the IATA World Aviation Summit. The CEOs of these airlines adopted a resolution at that Summit calling on governments and the entire industry value chain to show leadership and responsibility in this time of crises. They called on governments to refrain from imposing multiple and additional punitive taxes and charges that will only deepen this crises while at the same time take the steps necessary to modernize the air transport infrastructure eliminate wasteful fuel consumption and emissions.

DOT's determination to significantly raise costs to airlines through "market mechanism" economics experiments is exactly the type of activity this industry cannot afford during this crisis. It is estimated that international aviation supports 7% of global GDP and 32 million jobs. Proposals like these coming out of DOT cannot help but having a negative impact on this important economic engine.

We therefore urge the U.S. Congress to direct DOT to:

- Continue to focus all available resources on making needed operational and infrastructure improvements in the New York region to increase capacity at these airports
- Include Newark, JFK and LaGuardia in the WSG process until such time as new capacity measures make the cap unnecessary
- Cease all efforts to experiment with “market mechanisms”

Thank you for your consideration.