



# SLOTS AND BUSINESS AVIATION - THE LEGAL POSITION

John Balfour  
Clyde & Co

**EUACA SEMINAR ON BUSINESS AVIATION**

**30 September 2009, Amsterdam**

---

- The Regulation is basically concerned with “air carriers” – ie air transport undertakings with an operating licence
  - For the purposes of slot allocation and grandfather rights it also applies to “business aviation operators”, when they operate according to a schedule (Art 2(f))
  - “Business aviation” is defined as “that sector of general aviation which concerns the operation or use of aircraft by companies for the carriage of passengers or goods as an aid to the conduct of their business, where the aircraft are flown for purposes generally considered not for public hire and are piloted by individuals having, at a minimum, a valid commercial pilot licence with an instrument rating” (Art 2(l))
-

- Series of slots (at least 5 slots at the same time on the same day of the week) are allocated to applicant carriers (Art 8.1)
  - Where all slot requests cannot be accommodated, “preference shall be given to commercial air services and in particular to scheduled services and programmed non-scheduled air services” (Art 8.3)
  - The coordinator shall also take into account the IATA WSG and “local guidelines proposed by the coordination committee and approved by the Member State or any other competent body responsible for the airport”, provided they comply with Community law (Art 8.5)
  - “The coordinator shall, in addition to the planned slot allocation for the scheduling period, endeavour to accommodate single slot requests with short notice for any type of aviation, including general aviation. To this end, slots remaining in the pool ... after distribution among the applicant carriers and slots available at short notice may be used” (Art 8.7).
-

- An air carrier is entitled to the same series of slots in the next equivalent scheduling period if it can show they have been used by that carrier for the operation of scheduled and programmed non-scheduled services and operated for at least 80% of the time during the scheduling period for which they have been allocated (Arts 8.2 and 10.2)
  - Slots not thus allocated are placed in the pool (Art 10.1)
  - New entrants have priority as to 50% of pool slots, and “the coordinator shall treat the requests of new entrants fairly, in accordance with the coordination periods of each scheduling day” (Art 10.6)
  - “New entrant” means essentially an operator of scheduled passenger services, but includes any carrier with an operating licence, or business aviation operator operating according to a schedule, provided it is applying for a series of slots (over at least 5 weeks) and, if the application were granted, would hold less than 5 slots at the airport on that day (Art 2(b))
-

5.8 Aircraft operations may be classified into the following broad categories:

- (a) Regular scheduled services (ie, “pre-planned programs of flights, usually operating on a regular basis throughout a scheduling period. This term includes programmed charter services and business aviation”)
- (b) Ad-hoc services (ie, to which historical precedence does not apply)
- (c) Other operations

In the event of conflict arising between these different categories, priority should be given to (a) and then (b) above

6.4.1 Slots cleared by coordinators as ad hoc are not eligible for historical precedence

---

- Holders of grandfather rights
- New entrants (for 50% of pool slots)
- Scheduled and programmed non-scheduled services (including business aviation)
- Other commercial services
- Single slots for ad hoc services
- Other operations

So, business aviation at the end unless operating a regular schedule for at least 5 weeks or other “programmed” services

“Programmed” means more than “regular usage of slots” (see IATA WSG)

---

Only granted in a slot if it has been operated:

- for scheduled or programmed non-scheduled services; and
- for a minimum of 5 occasions at the same time on the same day of the week; and
- operated for at least 80% of the time for which the slots have been allocated

Hence business aviation will rarely acquire grandfather rights

The historic right arises in respect of a specific time and specific day of the week

The operation must be by “that air carrier” so that grandfather rights cannot be acquired on a pooled or group basis

---

- Corporate
    - normally private transport
    - occasionally programmed
  - Air taxi
    - public transport
    - never or rarely programmed
  - Executive jet
    - normally private transport
    - never or rarely programmed
-



# THE HEJOA CASE – ENGLISH HIGH COURT 14 JULY 1998

HEJOA challenged ACL's new rules on allocation of ad hoc slots available from supplementary capacity, which would be allocated on a first come first served basis and not available during peak hours

Slots derived from supplementary capacity (which are outside the capacity determined to be available for allocation, and hence outside the Regulation) were different from ad hoc slots granted from the pool

“The Regulation was never intended to confer historic rights on those allocated a slot on an ad hoc basis”, because:

- the Regulation does not apply
- the coordinator must take the IATA WSG into account
- the intention of the Regulation is that ad hoc slots should continue to be available, not converted into historic rights
- of the requirement of 80% use

Now all slots covered by the Regulation

---

“Local guidelines” are recognised by the Regulation, but have to be proposed by the Coordination Committee

“Local rules” are permitted by Art 19.1 of Regulation 1008/2008 “The exercise of traffic rights shall be subject to published Community, national, regional and local operational rules relating to safety, security, the protection of the environment and the allocation of slots”

But local guidelines and rules must be consistent with Regulation 95/93

In fact, local rules at LHR and LGW (the 1991 Traffic Distribution Rules) exclude general or business aviation at periods of peak congestion, otherwise than with special permission

---

Possible solutions if Regulation 95/93 were to be amended:

- Allow historics related to amount of usage, not just specified times/days
  - Permit historics to be calculated on a group basis
  - Permit a member state to ring fence certain slots for business aviation (as currently for PSOs)
-

Clyde & Co LLP is a limited liability partnership registered in England and Wales.

Regulated by the Solicitors Regulation Authority.

© Clyde & Co LLP 2009

---