**Calendar No. 300**

| 107TH CONGRESS<br>*1st Session* | SENATE | REPORT<br>107–130 |
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# AVIATION COMPETITION RESTORATION ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 415

DECEMBER 19 (legislative day, DECEMBER 18), 2001.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

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107TH CONGRESS, 1st Session | SENATE | REPORT 107–130

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DECEMBER 19 (legislative day, DECEMBER 18), 2001.—Ordered to be printed

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

# REPORT

[To accompany S. 415]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 415) "A Bill to amend title 49, United States Code, to require that air carriers meet public convenience and necessity requirements by ensuring competitive access by commercial air carriers to major cities, and for other purposes", having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

## PURPOSE OF THE BILL

The purpose of the Aviation Competition Restoration Act (ACRA), S. 415, is to ensure competitive access to gates, facilities, and other assets at the nation's largest airports.

## BACKGROUND AND NEEDS

In 1978, believing that competition among airlines would improve air service and lower fares for the traveling public, Congress passed the Airline Deregulation Act of 1978. This landmark legislation phased out federal government control over ticket prices, routes, and services, and preempted local actions to regulate such activities.

Many argue and some independent studies have indicated that airline deregulation has brought better service at lower prices to the majority of communities and consumers around this country. Generally, the development of hub-and-spoke network systems and the creation of other types of new service have provided the flying public with more service options. By bringing passengers from multiple origins (the spokes) to a common point (the hub) and placing them on new flights to their ultimate destination, the hub-and-spoke system provides for more frequent flights and more travel options to many communities. Yet, over time, the network system has resulted in less competition in some areas. At each of 20 major airports, only one carrier and its affiliates dominate service and where there is such a dominant carrier at a hub airport with barriers to entry, higher air fares have resulted. For example, travelers in cities with major hubs have few choices when taking short-haul, nonstop flights because the hubbing carrier often controls 50 percent or more of the local passenger traffic. According to the Department of Transportation (DOT), in the January 2001 Dominated Hub Fares study, airfares at so-called "fortress hub airports" are 41 percent higher than at hubs with greater competition. In short-haul hub markets without a low-fare carrier, passengers pay 54 percent more on average than passengers in comparable markets with low-fare carriers.

According to a 1996 study conducted by the General Accounting Office (GAO), low-fare point-to-point carriers are the driving force behind the benefits of airline deregulation. The entrance of a new low-fare carrier injects competition into a market and, typically, results in new service being added by both established carriers and the new entrant. This so-called Southwest Effect (named after Southwest Airlines) has made attracting low-fare service a top priority for local business and community leaders. In an April 1996 study, DOT estimated that almost 40 percent of domestic passengers traveled in markets with low-fare competition, saving consumers an estimated $6.3 billion in air fares. DOT has attributed virtually all of the domestic growth in service and declines in average fares in recent years to this growing form of competition.

To compete in a market, an air carrier must have access to airport facilities such as gates, ticket counters, and baggage carousels. Specific airport-air carrier practices such as exclusive-use gate-lease agreements and majority-in-interest clauses have limited the ability of new entrants and smaller carriers to compete with established carriers. Restrictive gate leases, some of which last up to twenty years, at many airports have helped single carriers dominate local markets. New entrants, including Sun Country Airlines and Air Tran, have testified before Congress that, even when gates and other facilities are not being used, airlines hoard gates and do not make them available to potential competitors, preferring to maintain a competitive advantage by stifling new entry. When gates are available, they are typically at non-preferred times or higher costs. AirTran also testified that if it had just four gates at a major airport it could provide 32–40 flights per day, enough to provide a competitive spur to incumbent carriers.

Since 1969, the FAA has limited the number of takeoffs and landings (collectively known as "slots") at Chicago's O'Hare International Airport, New York's LaGuardia Airport and Kennedy International Airport, and Ronald Reagan Washington National Airport. Because established airlines hold the rights to the majority of takeoff and landing slots, until recently, new entrants were almost shut out of the slot constricted airports. Government involvement was necessary to facilitate competitive access to these airports, and administrative and Congressional actions have enabled some smaller carriers to get a small foothold. Despite the slot regulations, for example, DOT awarded 75 slots to JetBlue Airways at Kennedy. JetBlue has been thriving and offering low fare competition to many markets. The most recent Federal Aviation Administration reauthorization act (known as AIR–21; P.L. 106–181) allowed several new slot exemptions at Reagan National for some smaller carriers to provide new services at lower fares.

Since deregulation, new entrants and low-cost carriers have not been able to maintain service in most of the new markets (nonstop segments) that they have entered. New entrant carriers allege that after they enter a market, incumbent carriers flood it with below-cost tickets, and that the incumbent carriers' "predatory pricing" and "predatory scheduling" practices prevent the new carriers from making a profit and force them to withdraw from the market. After the new entrant is successfully driven out, the incumbent carrier increases its airfares to their original price, or, in some cases, a higher price.

DOT has expressed concern that responses from incumbent carriers have strayed beyond the bounds of fair competition, aiming instead to drive their competitors out of the market. DOT has noted that some actions of incumbent carriers have resulted in their obtaining much lower revenue from their service than they would have obtained if they had responded in a more measured fashion.

On May 13, 1999, the Department of Justice (DOJ) filed an antitrust lawsuit against American Airlines for monopolizing and attempting to monopolize airline passenger service to and from Dallas/Ft. Worth International Airport. DOJ contends that American repeatedly sought to drive small, start-up carriers out of DFW by saturating routes with additional flights and reducing fares. On April 27, 2001, a Federal district court judge ruled that DOJ could not prove a case based on traditional antitrust law principles. DOJ, however, recently appealed the ruling.

## CONCENTRATION

Since Congress passed the Airline Deregulation Act in 1978, there have been concerns that deregulation would lead to greater concentration. One chart put into the Commerce Committee hearing record by Frank Borman, then CEO of Eastern Airlines, showed the top five air carriers accounting for 68.6% of the market in 1977. Today, the top five carriers account for 77% of the market. At the time, the Committee considered S. 415, the top five would have accounted for 83% of the market. Because data suggest that the hubs do compete with one another in the long haul markets, concerns about the effect of concentration on competition have focused largely on short-haul markets.

The National Academy of Sciences (NAS) in its 1991 study on deregulation, *Winds of Change*, stated:

> Several trends suggest that the industry will continue to concentrate, which at some point might threaten the benefits achieved during deregulation. Additional industry concentration may occur because of the nature of current competition among the largest carriers offering nationwide service. Being an effective major competitor requires,

> among other things, providing service to a broad network of cities. Only a limited number of carriers will be able to achieve market presence in a sufficient number of large cities to build a national network.
>
> In addition to the trend toward concentration in the national market, few hub airports are likely to support more than one hubbing carrier because of the substantial risk and cost associated with competing with a carrier at its hub, lack of gates and terminal space at many hub airports, and insufficient local traffic support. These conditions create an almost inevitable drift toward single-carrier dominance at many hubs, which further reduces competition in regional markets and gives the dominating carriers an opportunity to exercise market power.
>
> It is impossible to predict with certainty how the pending industry shakeout will affect competition and balance sheets. The loss of one or two carriers, for example, may reduce excess capacity in the industry and improve cash flow and profits for the remaining carriers. The loss of too many carriers, however, could reduce the amount of competition to below a level necessary to discipline pricing.[1]

Between 1978 and 1989, during which period the authority to approve mergers moved from the Civil Aeronautics Board, to the DOT, to the DOJ, virtually all merger requests were approved. The CAB approved 10 transactions from 1979 to 1984. (Only one transaction, Continental-Western I, was rejected, but later approved in Continental-Western II, which was overtaken by Frank Lorenzo's bid to combine Texas Air Corporation with Continental.) DOT approved 27 mergers.

Much of the theory of airline deregulation and analysis during this period rested on two assumptions that, first, actual competition existed and that, second, potential competition was always just around the corner. Merger analysis by the CAB, and later, DOT, relied heavily on the ability of a carrier to possibly enter a market. If one market seemed to be a problem, or a barrier to entry existed (e.g. gates at Denver in the Continental-Western merger proposals), then the CAB would look at the national, rather than the regional, market. Using these assumptions and fluid definitions of markets, CAB would then determine that entry was easy under deregulation because it reasoned that aircraft could move into and out of markets whenever fares were too high, and the CAB would approve the deal. The flaw in this reasoning was that while aircraft are movable, the ability of carriers to respond to new entry by changing fares quickly made entry on a route a more difficult, complex decision. As computers became more sophisticated in providing and responding to fares, and hubs became increasingly larger, the decision to enter a specific market became difficult.

Due in part to past merger approval policies, the DOT reports that concentration levels at specific hubs are high today.

While the degree of concentration alone does not necessarily indicate that there is a competition problem, dominant carriers have the ability to charge premiums on routes to and from the hub where barriers to entry exist. In its 1991 report, *Winds of Change*,

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[1] *Winds of Change*, p. 2–3.

the National Academy of Science defined a barrier to entry as (a) the total inability of a firm to enter a market, (b) the existence of costs borne by the new entrant but not borne by the incumbent, or (c) advantages that accrue to incumbent firms because of economies of scale and scope.

The NAS then described potential barriers to entry as (a) the financial risk of entry, (b) airport capacity constraints that diminish the prospects of entry, (c) environmental issues that affect airport use and the availability and cost of aircraft, and (d) the effects of airline marketing strategies on competition.[2]

The concerns about competition expressed by the NAS a decade ago were restated in the NAS's most recent report on the aviation industry, in which it observed that:

> For nearly two decades now, the literature consistently has shown higher fares in city-pair markets that include a concentrated hub as either the origin or destination point; this especially applies to short haul markets. [3]

The recent NAS report also noted the ability of hub carriers to limit entry by other carriers through control of gates.

## PREDATORY CONDUCT

Traditionally, predatory pricing regulation has focused on companies pricing their products below cost. Despite the difficulty of proving below cost pricing, by 1997, DOT believed that it could have taken enforcement action against a number of carriers, but chose instead to propose rules to prevent predatory pricing. The DOT guidelines, which focused on forgone revenues rather than actual costs, were controversial.

Testimony regarding predatory conduct presented to the Committee by Spirit airlines, was particularly insightful. According to Mr. Kahan, Spirit went into the Detroit-Philadelphia market with a fare as low as $49 and as high as $139. Northwest then matched the fares and increased the number of flights and seats by 15%. Eventually, according to Spirit, lacking a frequent flyer base in Detroit (which is one of Northwest's hubs), Spirit dropped out of the market. Mr. Kahan indicated that Northwest immediately raised its fares to $381 for a one-way flight.

The guidelines proposed by DOT were supported by most of the low cost carriers and opposed by the major, network carriers. As a result, as part of the Omnibus Appropriations Act of 1998, the National Academy of Sciences was directed to study the issue for 6 months and submit a report to Congress. In January, 2001, DOT declined to adopt its proposed guidelines on competition and instead issued a report, cited earlier, detailing the competitive problems in the aviation industry.

## LEGISLATIVE HISTORY

On February 28, 2001, S. 415, the Aviation Competition Restoration Act, was introduced by Senator Hollings and cosponsored by Senators McCain, Dorgan, and Grassley. Senators Wyden and Reid were subsequently added to S. 415 as cosponsors. On March 12,

[2] *Winds of Change*, p. 134.
[3] Study on Entry and Competition in the U.S. Airline Industry, NAS, 1999, p. 72.

2001, the Committee held a hearing on S. 415 and competition in the airline industry. Witnesses at the hearing included representatives of the GAO, the State Attorneys General, consumers, and small and large airlines. (The Committee held numerous hearings on airline competition and consolidation during the 106th Congress.) On March 15, 2001, the Committee ordered S. 415 reported with an amendment in the nature of a substitute containing technical and substantive changes offered by Senators Hollings and McCain.

## SUMMARY OF MAJOR PROVISIONS

As reported, S. 415 would:

1. Require DOT to investigate the assignment and use of gates, facilities, and other assets by major air carriers at the largest 35 U.S. airports to determine whether aviation system assets are being hoarded and whether there is meaningful, competitive access.
2. Allow DOT to require a major air carrier to make gates, facilities, and other assets available to other carriers on terms that are fair, reasonable, and nondiscriminatory to ensure competitive access to the largest airports if, based on its investigation, DOT determines that such assets are not available and that competition would thereby be enhanced at those airports.
3. Make it an unfair method of competition in air transportation for a dominant air carrier at a dominated hub airport to: (A) fail to use gates, facilities, and other assets fully; and (B) upon request, refuse, deny, or fail to provide a gate, facility, or other underused asset to another carrier on fair, reasonable, and nondiscriminatory terms.
4. Allow DOT, in fiscal year (FY) 2002, to make up to $300 million in Airport Improvement Program (AIP) grants for the construction of gates, related facilities, and other assets to enhance and increase competition among air carriers for passenger air transportation.

## ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, April 25, 2001.*

Hon. JOHN MCCAIN,
*Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 415, the Aviation Competition Restoration Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Hadley (for federal costs), Victoria Heid Hall (for the state and local impact), and Jean Talarico (for the private-sector impact).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

*S. 415—Aviation Competition Restoration Act*

Summary: S. 415 would direct the Department of Transportation (DOT) to investigate air carriers' use of landing slots and facilities at the 35 largest airports, and to determine whether reassigning those assets would improve competition between air carriers. Under the bill, DOT could require an air carrier to relinquish airport landing slots and facilities if the agency determines that such assets are not fully utilized or made available to other carriers and that divestiture would improve competition. S. 415 also would authorize the Secretary of Transportation to order air carriers to stop hoarding landing slots and facilities that are underused at the largest airports. Finally, the bill would authorize the appropriation of $300 million to provide grants to construct new gate facilities if they are necessary to ensure competition among air carriers at the largest airports.

Based on the spending patterns of current grant programs for airports and on information from DOT, CBO estimates implementing S. 415 would cost about $294 million over the 2001–2006 period, assuming appropriation of the necessary amounts. Because S. 415 would not affect direct spending or receipts, pay-as-you-go procedures would not apply.

S. 415 contains both an intergovernmental and private-sector mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would authorize the Secretary of Transportation to break contractual arrangements between public airport operators and private air carriers under certain conditions. CBO estimates that the cost to comply with the intergovernmental mandate would not exceed the threshold established by UMRA ($56 million in 2001, adjusted annually for inflation). CBO cannot determine whether the direct cost to the private sector would exceed the annual threshold defined by UMRA ($113 million in 2001, adjusted annually for inflation) because new requirements on air carriers would depend on specific standards that would be established by the Secretary of Transportation, and because information on financial and business arrangements between air carriers and airports is not available.

Estimated cost to the Federal Government: For this estimate, CBO assumes S. 415 will be enacted during fiscal year 2001 and that the estimated amounts will be appropriated for each year. The estimated budgetary impact of S. 415 is shown in the following table. The costs of this legislation fall within budget function 400 (transportation).

| | By fiscal year, in millions of dollars— | | | | | |
|---|---|---|---|---|---|---|
| | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 |
| Spending Subject to Appropriation | | | | | | |
| Estimated Authorized Level | 1 | 301 | 1 | 1 | 1 | 1 |
| Estimated Outlays | 1 | 52 | 127 | 67 | 31 | 16 |

Basis of estimate: S. 415 would direct the Department of Transportation to investigate air carriers' use of landing slots and facilities at the 35 largest airports within 90 days of its enactment. Based on information from DOT, COB estimates that conducting this investigation and issuing regulations to implement its findings would cost about $1 million in 2001.

S. 415 would authorize the appropriation of $300 million in 2002 for grants to construct gates if they are necessary to ensure competition among airlines at the largest airports. For this estimate, CBO assumes DOT will find that such grants are necessary. Based on the spending patterns of current grants to airports, CBO estimates implementing this provision would cost about $288 million over the 2002–2006 period.

Under the bill the Department of Transportation could require an air carrier to relinquish airport assets (i.e., gates or other facilities). Based on information from DOT concerning the cost of litigation, CBO estimates that implementing this provision would cost about $1 million a year over the 2002–2006 period.

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: S. 415 contains both an intergovernmental and private-sector mandate as defined in UMRA because it would authorize the Secretary of Transportation to break contractual arrangements between public airport operators and private air carriers if the Secretary determines that airport gages, facilities, and landing slots are not available or are underutilized and competition would be increased by reallocation of those resources.

CBO estimates that breaking contractual agreements would be unlikely to have a significant impact on airport revenues because any lost gate fees and airfield fees from one air carrier would likely be offset by fees from the new air carrier gaining access to the airport gates and facilities. The bill would impose no significant cost on airport authorities and costs would not exceed the threshold established by UMRA ($56 million in 2001, adjusted annually for inflation) for intergovernmental mandates. S. 415 would benefit airports by authorizing the appropriation of $300 million in fiscal year 2002 for grants to enhance competition among air carriers at certain airports. The conditions on such grants would be entered into voluntarily by airports.

The loss of revenues to those air carriers that would be required to relinquish their airport facilities and landing slots would be a gain to the air carriers that would have access to those facilities and slots. CBO cannot determine if the net effect to the air carriers in aggregate would exceed the threshold for private-sector mandates ($113 million in 2001, adjusted annually for inflation) because we do not know how often the Secretary would use the authority provided in this bill or how air carriers would respond to the loss or gain of facilities and landing slots. Moreover, details about current and future contracts are not available.

Estimate prepared by: Federal Costs: Mark Hadley, Impact on State, Local, and Tribal Governments; Victoria Heid Hall, Impact on the Private Sector: Jean Talarico.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

## REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

### NUMBER OF PERSONS COVERED

Under section 3, major air carriers may be required to make available gates, facilities, and other assets at the 35 largest airports if DOT determines that there is a lack of competitive access and that competition would be enhanced by doing this.

Section 4 would subject all major air carriers to the possibility of DOT civil enforcement action for engaging in behavior that fits the expanded definition of unfair methods of competition, which is one of the following actions at a dominated hub (where the carrier has more than 50 percent of the passenger traffic): (1) failure to utilize gates, facilities, and other assets fully; and (2) upon request, refusal, denial, or failure to provide a gate, facility, or other underutilized asset to another carrier on fair, reasonable, and nondiscriminatory terms.

### ECONOMIC IMPACT

Section 3 could reduce air fares for 25–50 million passengers that today are without effective competition. While incumbent air carriers could be required to make room for new entrants, the number of gates that might be needed to provide effective competition at the nation's top 35 airports, and the extent to which carriers want to serve those specific airports, is not known. Airport proprietors generally lease gates to carriers, and if a carrier were required to sublease or return a gate to the proprietor, the air carrier would save the cost of the lease payment. At many of the largest hubs, the dominant carrier controls entire concourses with multiple gates. In most cases, it is anticipated that carriers will be able to share gates, or gates will be built by the airport operator. It is not clear to what extent making a gate or a few gates available would impact incumbent carriers. In addition, while dominant carriers allege that they would be forced to cut service to small communities, protections are included in the bill to ensure that this does not occur. The bill does not cover commuter gates, which generally are used to service aircraft that serve small communities. Smaller air carriers and consumers would benefit from increased competition brought about by the enhanced availability of gates, facilities, and other assets at the 35 largest airports.

Section 4 may cause dominant air carriers at dominated hub airports that engage in the unfair methods of competition delineated in this section to incur fines imposed by DOT. Consumers and smaller carriers may experience economic gains if major carriers are deterred from engaging in unfair methods of competition that restrict competitive access at key airports.

Section 5 authorizes $300 million in FY 2002 for DOT to make grants for gates, related facilities, and other assets to enhance and increase competition among air carriers for passenger air transportation. Grants that expand access to restricted airports would benefit consumers and smaller carriers by increasing competition.

PRIVACY

The bill will not have any adverse impact on the personal privacy of the individuals affected.

PAPERWORK

Section 3 will increase paperwork for DOT for investigation of the use of assets by major air carriers at the largest U.S. airports. It may increase paperwork for major air carriers to make assets available to other carriers and for other carriers to procure such assets.

Section 4 may increase paperwork for DOT to enforce penalties for the delineated unfair methods of competition in air transportation by dominant air carriers at dominated hub airports.

Section 5 may increase paperwork in FY 2002 for DOT and airports associated with the issuance of AIP grants to enhance competitive access.

SECTION-BY-SECTION ANALYSIS

*Section 1. Short Title*

This section states that the short title of the bill is the "Aviation Competition Restoration Act".

*Section 2. Findings*

This section sets forth ten congressional findings establishing the general basis for enactment of the bill.

*Section 3. Competitive Access to Gates, Facilities, and Other Assets*

This section requires the Secretary to investigate the assignment and usage of gates, facilities, and other assets by major air carriers at the largest 35 domestic airports (in terms of air passenger traffic). It gives the Secretary the authority to require a major air carrier to relinquish gates, facilities, and other assets so that they may be made available to other carriers on terms that are fair, reasonable, and nondiscriminatory to ensure competitive access to such airports if the Secretary determines that such assets are not available and that competition would, thereby, be enhanced at those airports.

Airlines have argued that if they are required to relinquish gates, facilities, and other assets to make room for competition at constricted hub airports, air service to small communities will be cut first because of the thin profit margins on such routes. However, some airlines may be underutilizing such assets in order to limit competition. If that is the case, there is room to maintain existing service to small communities and accommodate increased competition. Nevertheless, this section explicitly protects service to small communities by excluding gates, facilities, and other assets used exclusively by commuter air carriers (also known as regional airlines) from the scope of the Secretary's powers. Access to these key hubs is protected for these smaller carriers because they provide most of the air service to small communities.

This section also contains definitions for a variety of the terms used in the statutory language. For example, the definition of "major air carrier" is modeled directly on the one used by DOT and is tied to the percentage of total domestic scheduled-passenger revenues earned by an airline in the 12-month period ending March 31 of each year. There are also definitions for dominant air carrier (more than 50 percent of the enplaned passengers at an airport), commuter air carrier, asset (which includes slots and slot exemptions), and passenger enplanements.

*Section 4. Unfair Methods of Competition*

This section makes it an unfair method of competition in air transportation for a dominant air carrier at a dominated hub airport to: (1) fail to use gates, facilities, and other assets fully at that airport; and (2) refuse, deny, or fail to provide a gate, facility, or other underused asset at such an airport to another carrier on fair, reasonable, and nondiscriminatory terms upon request of the airport, another air carrier, or the Secretary. An air carrier seeking access to a dominated hub must file with the Secretary a copy of the request it has made to the dominant carrier. This section also codifies an existing provision of law (regarding the Secretary's duty to ensure access to some airports) that had been enacted as section 155 of Public Law 106–181 (AIR–21).

*Section 5. AIP Competition Funding*

This section authorizes $300 million in FY02 for the Secretary to make grants for gates, related facilities, and other assets to enhance and increase competition among air carriers for passenger air transportation. If determined necessary to ensure competitive access at any of the 35 largest airports, the Secretary would make gate construction projects eligible for Airport Improvement Program (AIP) funding. (Gates are not currently eligible for AIP funding.) Any gate-related AIP projects must adhere to the relevant regulatory standards that apply to gates constructed using Passenger Facility Charge funds.

## ROLLCALL VOTES IN COMMITTEE

In accordance with paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following description of the record votes during its consideration of S. 415:

Senators Hollings and McCain offered an amendment in the nature of a substitute to make technical and substantive changes. On a rollcall vote of 12 yeas and 10 nays as follows, the Managers' amendment was adopted:

| YEAS—12 | NAYS—10 |
|---|---|
| Mr. Hollings | Mr. Rockefeller |
| Mr. Inouye | Mr. Cleland |
| Mr. Kerry | Mr. Stevens |
| Mr. Breaux | Mr. Burns |
| Mr. Dorgan | Mr. Lott |

Mr. Wyden
Mrs. Boxer
Mr. Edwards
Mrs. Carnahan
Mr. McCain
Mr. Fitzgerald
Mr. Ensign

Mrs. Hutchison
Ms. Snowe
Mr. Brownback[1]
Mr. Smith[1]
Mr. Allen[1]

[1] By proxy.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 49. TRANSPORTATION

SUBTITLE VII. AVIATION PROGRAMS

PART A. AIR COMMERCE AND SAFETY

SUBPART II. ECONOMIC REGULATION

CHAPTER 417. OPERATIONS OF CARRIERS

SUBCHAPTER I. REQUIREMENTS

* * * * * * *

**§ 41712. Unfair and deceptive practices and unfair methods of competition**

(a) IN GENERAL.—On the initiative of the Secretary of Transportation or the complaint of an air carrier, foreign air carrier, or ticket agent, and if the Secretary considers it is in the public interest, the Secretary may investigate and decide whether an air carrier, foreign air carrier, or ticket agent has been or is engaged in an unfair or deceptive practice or an unfair method of competition in air transportation or the sale of air transportation. If the Secretary, after notice and an opportunity for a hearing, finds that an air carrier, foreign air carrier, or ticket agent is engaged in an unfair or deceptive practice or unfair method of competition, the Secretary shall order the air carrier, foreign air carrier, or ticket agent to stop the practice or method.

(b) E-TICKET EXPIRATION NOTICE.—It shall be an unfair or deceptive practice under subsection (a) for any air carrier, foreign air carrier, or ticket agent utilizing electronically transmitted tickets for air transportation to fail to notify the purchaser of such a ticket of its expiration date, if any.

*(c) UNDERUTILIZATION OF GATES, FACILITIES, OR OTHER ASSETS.—*

*(1) IN GENERAL.—It is an unfair method of competition in air transportation under subsection (a) for a dominant air carrier at a dominated hub airport—*

*(A) to fail to utilize gates, facilities, and other assets fully at that airport; and*

*(B) to refuse, deny, or fail to provide a gate, facility, or other asset at such an airport that is underutilized by it, or that will not be fully utilized by it within 1 year, to another carrier on fair, reasonable, and nondiscriminatory terms upon request of the airport, the other air carrier, or the Secretary.*

*(2) REQUESTING CARRIER MUST FILE WITH DOT.—An air carrier making a request for a gate, facility, or other asset under paragraph (1) shall file a copy of the request with the Secretary when it is submitted to the dominant air carrier.*

*(3) AVAILABILITY OF GATES AND OTHER ESSENTIAL SERVICES.—The Secretary shall ensure that gates and other facilities are made available on terms that are fair and reasonable to air carriers at covered airports where a 'majority-in-interest clause' of a contract or other agreement or arrangement inhibits the ability of the local airport authority to provide or build new gates or other essential facilities.*

*(4) DEFINITIONS.—In this subsection:*

*(A) DOMINANT AIR CARRIER.—The term "dominant air carrier" has the meaning given that term by section 41722(c)(2).*

*(B) DOMINATED HUB AIRPORT.—The term "dominated hub airport" means an airport—*

*(i) that each year has at least .25 percent of the total annual boardings in the United States; and*

*(ii) at which 1 air carrier accounts for more than 50 percent of the enplaned passengers.*

*(C) COVERED AIRPORT.—The term "covered airport" has the meaning given that term by section 47106(f)(3).*

*(D) ASSET.—The term "asset" includes slots (as defined in section 41714(h)(4)) and slot exemptions (within the meaning of section 41714(a)(2)).*

* * * * * * *

### *§ 41722. Competitive access to gates, facilities, and other assets*

*(a) DOT REVIEW OF GATES, FACILITIES, AND ASSETS.—Within 90 days after the date of the enactment of Aviation Competition Restoration Act, the Secretary of Transportation shall investigate the assignment and usage of gates, facilities, and other assets by major air carriers and their affiliated carriers (other than commuter air carriers) at the largest 35 airports in the United States in terms of passenger enplanements. The investigation shall include an assessment of—*

*(1) whether, and to what extent, gates, facilities, and other assets are being fully utilized by major air carriers and their affiliated carriers at those airports;*

*(2) whether gates, facilities, and other assets are available for competitive access to enhance competition; and*

*(3) whether the reassignment of gates, facilities, and other assets to, or other means of increasing access to gates, facilities, and other assets for, air carriers (other than dominant air carriers) would improve competition among air carriers at any such airport or provide other benefits to the flying public without compromising safety or creating scheduling, efficiency, or*

*other problems at airports providing service to or from those airports.*

*(b) AUTHORITY OF SECRETARY TO MAKE GATES, ETC., AVAILABLE.—*

*(1) IN GENERAL.—The Secretary shall require a major air carrier and its affiliated carrier, upon application by another air carrier or on the Secretary's own motion, to relinquish gates, facilities, and other assets available so that those facilities may be leased by the airport sponsor, or, in the case of slots, be reallocated by the Secretary, to other air carriers on terms that are fair, reasonable, and nondiscriminatory to ensure competitive access to those airports if the Secretary determines, on the basis of the investigation conducted under subsection (a), that such gates, facilities, and other assets are not available, or are underutilized, and that competition would be enhanced thereby at those airports.*

*(2) PROTECTION OF SMALL COMMUNITIES.—Paragraph (1) does not apply to any gate, facility, or asset exclusively used by a commuter air carrier.*

*(c) DEFINITIONS.—*

*(1) MAJOR AIR CARRIER.—In this section the term "major air carrier" means an air carrier certificated under section 41102 that accounted for at least 1 percent of domestic scheduled-passenger revenues in the 12 months ending March 31 of each year, as reported to the Department of Transportation pursuant to part 241 of title 14, Code of Federal Regulations, and identified as a reporting carrier periodically in accounting and reporting directives issued by the Office of Airline Information.*

*(2) DOMINANT AIR CARRIER.—The term "dominant air carrier" means an air carrier that accounts for more than 50 percent of the enplaned passengers at an airport.*

*(3) COMMUTER AIR CARRIER.—The term "commuter air carrier" has the meaning given it by section 41714(h)(1).*

*(4) ASSET.—The term "asset" includes slots (as defined in section 41714(h)(4)) and slot exemptions (within the meaning of section 41714(a)(2)).*

*(5) AFFILIATED CARRIER.—The term "affiliated carrier" has the meaning given it by section 41714(k).*

*(6) PASSENGER ENPLANEMENTS.—The term "passenger enplanements" means the annual number of passenger enplanements, as determined by the Secretary of Transportation, based on the most recent data available.*

## *CHAPTER 471. AIRPORT DEVELOPMENT*

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### ***§ 47138. Competition enhancement program***

*(a) IN GENERAL.—Notwithstanding any provision of this title to the contrary, the Secretary of Transportation may make project grants under this subchapter from the Airport and Airway Trust Fund for gates, related facilities, and other assets to enhance and increase competition among air carriers for passenger air transportation, selected by the Secretary on a case-by-case basis, at airports described in section 41722(a). In carrying out this subsection, the*

*Secretary shall give priority to gates that will enhance service to small and medium-sized communities.*

*(b) SECRETARY MAY INCUR OBLIGATIONS.—The Secretary may incur obligations to make grants under this section.*

*(c) CONSISTENCY OF REQUIREMENTS.—*

*(1) IN GENERAL.—The Secretary shall make gates eligible for project funding under chapter 471 at any airport described in section 41722(a) where the Secretary determines that such funding is necessary to ensure competitive access at that airport.*

*(2) PARITY BETWEEN AIP-FINANCED AND PFC-FINANCED GATES.—The Secretary shall by regulation require that projects related to gates described in paragraph (1) are subject, to the extent appropriate, to the requirements set forth in Appendix A to part 158 of title 14 of the Code of Federal Regulations for—*

*(A) non-exclusivity of contractual agreements;*

*(B) carryover provisions; and*

*(C) competitive access.*

*(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the Airport and Airway Trust Fund $300,000,000 for fiscal year 2002, such amount to remain available until expended.*

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