

105TH CONGRESS
2D SESSION

H. R. 3160

To enhance competition between airlines and reduce airfares, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 4, 1998

Mr. SCHUMER (for himself, Ms. SLAUGHTER, Mr. LaFALCE, Mr. McNULTY, and Mr. HINCHEY) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To enhance competition between airlines and reduce airfares, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Airline Competition
5 and Lower Fares Act”.

6 **SEC. 2. WITHDRAWAL OF SLOTS.**

7 (a) WRITTEN DETERMINATION.—Not later than 1
8 year after the date of the enactment of this Act, the Sec-
9 retary shall issue a separate written determination with
10 respect to each of LaGuardia Airport, O’Hare Inter-

1 national Airport, John F. Kennedy International Airport,
2 and Metropolitan Washington Airport (commonly known
3 as Washington National Airport) as to whether the de-
4 mand among air carriers for slots at the airport can be
5 met with the slots at the airport that are available to the
6 Secretary.

7 (b) INITIAL WITHDRAWAL OF SLOTS.—If the Sec-
8 retary determines under subsection (a) that the demand
9 among air carriers for slots at an airport cannot be met
10 with the slots at the airport that are available to the Sec-
11 retary, the Secretary shall withdraw slots at that airport
12 from dominant carriers for redistribution pursuant to this
13 Act. Such withdrawals shall be made in accordance with
14 section 41714 of title 49, United States Code, and other
15 applicable laws and regulations.

16 (c) SUBSEQUENT WITHDRAWALS.—

17 (1) WRITTEN DETERMINATION.—Not later than
18 2 years after the date of the auction under section
19 3(a), and every 2 years thereafter, the Secretary
20 shall issue a written determination as to whether the
21 redistribution of additional slots under this Act
22 would significantly increase competition between air
23 carriers.

24 (2) REQUIREMENT TO WITHDRAW SLOTS.—If
25 the Secretary determines under paragraph (1) that

1 the redistribution of additional slots would signifi-
2 cantly increase competition, the Secretary shall with-
3 draw slots, in accordance with this section, in a
4 manner which will ensure such an increase. Such
5 withdrawals shall be made in accordance with sec-
6 tion 41714 of title 49, United States Code, and
7 other applicable laws and regulations.

8 (d) LIMITATION ON SLOT WITHDRAWALS.—

9 (1) INITIAL AUCTION.—The Secretary may not
10 withdraw for redistribution under this Act more
11 than 10 percent of the total number of slots held at
12 an airport by a dominant carrier for auction pursu-
13 ant to section 3(a).

14 (2) SUBSEQUENT AUCTIONS.—The Secretary
15 may not withdraw for redistribution under this Act
16 more than 5 percent of the total number of slots
17 held at an airport by a dominant carrier for auction
18 pursuant to section 3(b).

19 (3) CALCULATION OF PERCENTAGE.—In cal-
20 culating under this subsection the total number of
21 slots held at an airport by a dominant carrier, the
22 Secretary shall not take into account slots used by
23 the carrier for direct flights to low-competition air-
24 ports.

1 (e) PROHIBITION ON CERTAIN SLOT WITHDRAW-
 2 ALS.—The Secretary may not withdraw for redistribution
 3 under this Act a slot of a dominant carrier if the Secretary
 4 determines that the slot has been used by the carrier for
 5 direct flights to a low-competition airport throughout at
 6 least 24 of the preceding 30 months.

7 (f) WITHDRAWAL OF INTERNATIONAL SLOTS.—The
 8 Secretary shall not withdraw any slots used for inter-
 9 national flights.

10 **SEC. 3. AUCTIONS.**

11 (a) IN GENERAL.—After a withdrawal of slots pursu-
 12 ant to section 2, the Secretary shall auction such slots to
 13 new entrants and limited incumbents and shall award each
 14 slot, pursuant to this section, to the highest bidder for
 15 that slot.

16 (b) LIMITATION ON USE OF SLOTS.—The Secretary,
 17 in a manner which to the extent practicable represents the
 18 times and characteristics of all slots available for auction
 19 pursuant to this subsection, shall ensure that—

20 (1) 40 percent of the slots redistributed under
 21 this Act at each of LaGuardia Airport, O'Hare
 22 International Airport, and Metropolitan Washington
 23 Airport; and

24 (2) 10 percent of the slots redistributed under
 25 this Act at John F. Kennedy International Airport,

1 are distributed for use for flights to low-competition air-
2 ports.

3 (c) ELIGIBLE BIDDERS.—A person may bid for or
4 hold a slot offered at an auction conducted under this sec-
5 tion only if that person—

6 (1) is a new entrant or limited incumbent;

7 (2) is a citizen of the United States, or in the
8 case of a partnership or corporation, organized
9 under the laws of the United States or a State;

10 (3) has appropriate safety certification from the
11 Federal Aviation Administration;

12 (4) has appropriate economic certification from
13 the Department of Transportation;

14 (5) with respect to slots at a particular airport,
15 has not declined any slot at the airport for which the
16 new entrant or limited incumbent was eligible before
17 January 1, 1986;

18 (6) is not substantially owned or otherwise con-
19 trolled, as determined by the Secretary, by an ineli-
20 gible person; and

21 (7) is qualified, as determined by the Secretary,
22 to use a purchased slot.

23 (d) LIMITATION ON TRANSFER OF SLOTS.—A slot
24 obtained by a new entrant or limited incumbent at an auc-
25 tion conducted under this section may only be sold, leased,

1 traded, or transferred to a new entrant or limited incum-
 2 bent that meets the requirements of subsection (c).

3 (e) CHANGES IN OWNERSHIP.—If there is a change
 4 in the ownership of a new entrant or limited incumbent
 5 that obtains a slot at an auction conducted under this sec-
 6 tion, the slot shall revert to the Secretary, except that the
 7 Secretary may allow the new entrant or limited incumbent
 8 to retain the slot if the Secretary determines that such
 9 action is in the best interest of promoting competition.

10 (f) LIMITATION ON STATUTORY CONSTRUCTION.—
 11 Nothing in this section or section 2, including the use of
 12 competitive bidding, may be construed—

13 (1) to alter slots allocation criteria and proce-
 14 dures established by section 41714 of title 49,
 15 United States Code, or any other provision of law;

16 (2) to diminish the authority of the Secretary
 17 under any other provision of law to regulate or re-
 18 claim slots; or

19 (3) to convey any rights, including any expecta-
 20 tion of renewal of a slot assignment, that differ from
 21 the rights that apply to other slots at the same air-
 22 port that were not issued pursuant to this section.

23 (g) REVENUES.—The Secretary may use funds re-
 24 ceived from auctions held pursuant to this section to pro-
 25 vide reimbursement to dominant carriers from which slots

1 have been withdrawn under this Act for investments made
 2 by the carrier in the withdrawn slots and in airport im-
 3 provements at the airport where the carrier held the with-
 4 drawn slots. Any funds remaining after providing such re-
 5 imbursements shall be credited to the general fund of the
 6 Treasury as miscellaneous receipts.

7 **SEC. 4. SLOTS NOT ASSETS.**

8 (a) IN GENERAL.—A slot obtained under this Act or
 9 any other provision of law shall not be considered an asset
 10 for any purpose, including for collateral, for any agree-
 11 ment which would require forfeiture of the slot, or in any
 12 bankruptcy proceeding.

13 (b) APPLICABILITY.—This section shall not apply to
 14 any agreement or any renewal provision of any agreement
 15 in effect on the date of the enactment of this Act.

16 **SEC. 5. UNFAIR COMPETITION.**

17 (a) DETERMINATIONS REGARDING ACTIONS
 18 FILED.—

19 (1) ACTIONS FILED ON OR BEFORE DECEMBER
 20 31, 1997.—Not later than 6 months after the date of
 21 the enactment of this Act, the Secretary shall com-
 22 plete action on all complaints alleging predatory
 23 practices by air carriers that were filed with the Sec-
 24 retary on or before December 31, 1997.

1 (2) ACTIONS FILED AFTER DECEMBER 31, 1997,
2 AND BEFORE THE DATE OF THE ENACTMENT OF
3 THIS ACT.—Not later than 9 months after the date
4 of the enactment of this Act, the Secretary shall
5 complete action on all complaints alleging predatory
6 practices by air carriers that were filed with the Sec-
7 retary after December 31, 1997, but before the date
8 of the enactment of this Act.

9 (3) ACTIONS FILED ON OR AFTER THE DATE
10 OF THE ENACTMENT OF THIS ACT.—The Secretary
11 shall make an initial finding regarding any com-
12 plaint alleging a predatory practice by an air carrier
13 that is filed with the Secretary after the date of the
14 enactment of this Act, not later than 30 days after
15 such complaint is filed.

16 (b) RESTRAINING ORDER.—Not later than 15 days
17 after date of an initial finding under subsection (a)(3),
18 and after notice and opportunity for a hearing, the Sec-
19 retary shall enjoin, pending final determination, any ac-
20 tion that is found to be a predatory practice.

21 (c) REPORT TO CONGRESS.—Not later than 6
22 months after the date of the enactment of this Act, and
23 every 6 months thereafter, the Secretary shall transmit
24 a report to Congress describing complaints received by the
25 Secretary which allege predatory practices by air carriers

1 and any action taken by the Secretary on those com-
2 plaints.

3 (d) GUIDELINES.—Not later than 6 months after the
4 date of the enactment of this Act, the Secretary, in con-
5 sultation with the Attorney General of the United States,
6 shall issue guidelines defining predatory practices and un-
7 fair competition practices under this section and under
8 title 49, United States Code.

9 **SEC. 6. ACCESS TO FACILITIES.**

10 The Secretary shall ensure that all airport facilities
11 are available to new entrants at fees that are comparable
12 to the average fees paid by incumbents.

13 **SEC. 7. EVALUATION OF RULE.**

14 The Secretary shall initiate a rulemaking proceeding
15 to determine whether the application of the 80-percent
16 rule contained in section 93.227(a) of title 49, Code of
17 Federal Regulations, promotes, hinders, or has no effect
18 on airline competition.

19 **SEC. 8. LIMITS ON COMPETITION IN AVIATION INDUSTRY.**

20 Not later than 1 year after the date of the enactment
21 of this Act, and annually thereafter, the Secretary shall
22 transmit to Congress a report on barriers to entry, preda-
23 tory pricing, and other limits on competition in the avia-
24 tion industry.

1 **SEC. 9. PROHIBITION ON INCREASED NOISE.**

2 The Secretary shall issue such regulations as are nec-
3 essary to carry out this Act. However, the Secretary shall
4 not issue or approve any regulation or exemption in carry-
5 ing out this Act which would increase airplane noise in
6 communities surrounding an airport.

7 **SEC. 10. CLARIFICATION OF LEGAL STANDING.**

8 Section 41713(b) of title 49, United States Code, is
9 amended by adding at the end the following new para-
10 graph:

11 “(5) This subsection shall not bar any cause of action
12 brought against an air carrier by 1 or more private parties
13 seeking to enforce any right under the common law of any
14 State or under any State statute, other than a statute pur-
15 porting to directly prescribe fares, routes, or levels of air
16 transportation service.”.

17 **SEC. 11. DEFINITIONS.**

18 For purposes of this Act, the following definitions
19 apply:

20 (1) **DOMINANT CARRIER.**—The term “dominant
21 carrier” means a person that holds 10 percent or
22 more of the slots in an airport.

23 (2) **LIMITED INCUMBENT.**—The term “limited
24 incumbent” means a person that holds or operates
25 fewer than 12 slots at a particular airport, not in-
26 cluding international slots, Essential Air Service

1 Program slots, or slots between the hours of 2200
2 and 0659 at Metropolitan Washington Airport or
3 LaGuardia Airport.

4 (3) NEW ENTRANT.—The term “new entrant”
5 means a person that does not hold a slot at a par-
6 ticular airport and has not sold or given up a slot
7 at that airport after December 16, 1985.

8 (4) PERSON.—The term “person” includes a
9 commuter operator or air carrier.

10 (5) SECRETARY.—The term “Secretary” means
11 the Secretary of Transportation.

12 (6) SLOT.—The term “slot” means the oper-
13 ational authority to conduct one landing or takeoff
14 operation each day during a specific hour or 30
15 minute period at LaGuardia Airport, O’Hare Inter-
16 national Airport, John F. Kennedy International
17 Airport, or Metropolitan Washington Airport.

18 (7) LOW-COMPETITION AIRPORT.—The term
19 “low-competition airport” means an airport that—

20 (A) is not classified as a large hub; and

21 (B) the Secretary determines has substan-
22 tially less service than average or substantially
23 higher than average airfares.

