

106TH CONGRESS
1ST SESSION

H. R. 272

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

IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 1999

Ms. SLAUGHTER 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 high-density airport as to whether the de-

1 mand among air carriers for slots at the airport can be
2 met with the slots at the airport that are available to the
3 Secretary.

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

13 (c) SUBSEQUENT WITHDRAWALS.—

14 (1) WRITTEN DETERMINATION.—Not later than
15 2 years after the date of the auction under section
16 3(a), and every 2 years thereafter, the Secretary
17 shall issue a written determination as to whether the
18 redistribution of additional slots under this Act
19 would significantly increase competition between air
20 carriers.

21 (2) REQUIREMENT TO WITHDRAW SLOTS.—If
22 the Secretary determines under paragraph (1) that
23 the redistribution of additional slots would signifi-
24 cantly increase competition, the Secretary shall with-
25 draw slots, in accordance with this section, in a

1 manner which will ensure such an increase. Such
2 withdrawals shall be made in accordance with sec-
3 tion 41714 of title 49, United States Code, and
4 other applicable laws and regulations.

5 (d) LIMITATION ON SLOT WITHDRAWALS.—

6 (1) INITIAL AUCTION.—The Secretary may not
7 withdraw for redistribution under this Act more
8 than 10 percent of the total number of slots held at
9 a high-density airport by a dominant air carrier for
10 auction pursuant to section 3(a).

11 (2) SUBSEQUENT AUCTIONS.—The Secretary
12 may not withdraw for redistribution under this Act
13 more than 5 percent of the total number of slots
14 held at a high-density airport by a dominant air car-
15 rier for auction pursuant to section 3(b).

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

23 (e) PROHIBITION ON CERTAIN SLOT WITHDRAW-
24 ALS.—The Secretary may not withdraw for redistribution

1 under this Act a slot of a dominant air carrier at a high-
2 density airport if—

3 (1) the Secretary determines that the slot has
4 been used by the carrier for direct flights between
5 the airport and a low-competition airport throughout
6 at least 24 of the preceding 30 calendar months; or

7 (2) the slot is used for international flights.

8 **SEC. 3. AUCTIONS.**

9 (a) IN GENERAL.—After a withdrawal of slots at a
10 high-density airport pursuant to section 2, the Secretary
11 shall auction such slots to new entrant air carriers and
12 limited incumbent air carriers at the airport and shall
13 award each slot, pursuant to this section, to the highest
14 bidder for the slot.

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

19 (1) 40 percent of the slots redistributed under
20 this Act at each high-density airport other than
21 John F. Kennedy International Airport; and

22 (2) 10 percent of the slots redistributed under
23 this Act at John F. Kennedy International Airport,
24 are distributed for use for flights between the airport and
25 low-competition airports.

1 (c) ELIGIBLE BIDDERS.—A person may bid for or
2 hold a slot at a high-density airport offered at an auction
3 conducted under this section only if that person—

4 (1) is a new entrant air carrier or limited in-
5 cumment air carrier at the airport;

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

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

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

13 (5) has not declined any slot at the airport for
14 which the new entrant air carrier or limited incum-
15 bent air carrier was eligible before January 1, 1986;

16 (6) is qualified, as determined by the Secretary,
17 to use a purchased slot; and

18 (7) is not substantially owned or otherwise con-
19 trolled, as determined by the Secretary, by a person
20 who fails to meet any of the requirements estab-
21 lished by paragraphs (1) through (6).

22 (d) LIMITATION ON TRANSFER OF SLOTS.—A slot
23 obtained by a new entrant air carrier or limited incumbent
24 air carrier at a high-density airport through an auction
25 conducted under this section may only be sold, leased,

1 traded, or transferred to any other new entrant air carrier
2 or limited incumbent air carrier at the airport that meets
3 the requirements of subsection (c).

4 (e) CHANGES IN OWNERSHIP.—If there is a change
5 in the ownership of a new entrant air carrier or limited
6 incumbent air carrier that obtains a slot through an auc-
7 tion conducted under this section, the slot shall revert to
8 the Secretary; except that the Secretary may allow the new
9 entrant air carrier or limited incumbent air carrier to re-
10 tain the slot if the Secretary determines that such action
11 is in the best interest of promoting competition.

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

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

18 (2) to diminish the authority of the Secretary
19 under any other provision of law to regulate or with-
20 draw slots; or

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

1 (g) REVENUES.—The Secretary may use funds re-
 2 ceived from auctions held pursuant to this section to pro-
 3 vide reimbursement to any dominant air carrier from
 4 which a slot has been withdrawn under this Act for invest-
 5 ments made by the carrier in the withdrawn slot and air-
 6 port improvements at the airport where the carrier held
 7 the withdrawn slot. Any funds remaining after providing
 8 such reimbursements shall be credited to the general fund
 9 of the Treasury as miscellaneous receipts.

10 **SEC. 4. SLOTS NOT ASSETS.**

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

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

19 **SEC. 5. UNFAIR COMPETITION.**

20 (a) DETERMINATIONS REGARDING ACTIONS
 21 FILED.—

22 (1) ACTIONS FILED ON OR BEFORE DECEMBER
 23 31, 1998.—Not later than 6 months after the date of
 24 the enactment of this Act, the Secretary shall com-
 25 plete action on all complaints alleging predatory

1 practices by air carriers that were filed with the Sec-
2 retary on or before December 31, 1998.

3 (2) ACTIONS FILED AFTER DECEMBER 31, 1998,
4 AND BEFORE THE DATE OF THE ENACTMENT OF
5 THIS ACT.—Not later than 9 months after the date
6 of the enactment of this Act, the Secretary shall
7 complete action on all complaints alleging predatory
8 practices by air carriers that were filed with the Sec-
9 retary after December 31, 1998, but before the date
10 of the enactment of this Act.

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

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

23 (c) REPORT TO CONGRESS.—Not later than 6
24 months after the date of the enactment of this Act, and
25 every 6 months thereafter, the Secretary shall transmit

1 a report to Congress describing complaints received by the
2 Secretary which allege predatory practices by air carriers
3 and any action taken by the Secretary on those com-
4 plaints.

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

11 **SEC. 6. ACCESS TO FACILITIES.**

12 The Secretary shall ensure that all airport facilities
13 are available to new entrant air carriers at fees that are
14 comparable to the average fees paid by incumbent air car-
15 riers.

16 **SEC. 7. EVALUATION OF RULE.**

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

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

23 Not later than 1 year after the date of the enactment
24 of this Act, and annually thereafter, the Secretary shall
25 transmit to Congress a report on barriers to entry, preda-

1 tory pricing, and other limits on competition in the avia-
2 tion industry.

3 **SEC. 9. CLARIFICATION OF LEGAL STANDING.**

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

7 “(5) PROTECTION OF CERTAIN CAUSES OF ACTION.—
8 This subsection shall not bar any cause of action brought
9 against an air carrier by 1 or more private parties seeking
10 to enforce any right under the common law of any State
11 or under any State statute, other than a statute purport-
12 ing to directly prescribe fares, routes, or levels of air
13 transportation service.”.

14 **SEC. 10. DEFINITIONS.**

15 For the purposes of this Act, the following definitions
16 apply:

17 (1) AIR CARRIER.—The term “air carrier” has
18 the meaning given the term in section 40102 of title
19 49, United States Code.

20 (2) DOMINANT AIR CARRIER.—The term “domi-
21 nant air carrier” means a person that holds 10 per-
22 cent or more of the slots at a high-density airport.

23 (3) HIGH-DENSITY AIRPORT.—The term “high-
24 density airport” means each of the following air-
25 ports:

1 (A) LaGuardia Airport.

2 (B) O'Hare International Airport.

3 (C) John F. Kennedy International Air-
4 port.

5 (D) Ronald Reagan Washington National
6 Airport.

7 (4) LIMITED INCUMBENT AIR CARRIER.—The
8 term “limited incumbent air carrier” means a per-
9 son that holds or operates fewer than 12 slots at a
10 high-density airport, not including international
11 slots, essential air service program slots, or slots be-
12 tween the hours of 2200 and 0659 at Ronald
13 Reagan Washington National Airport or LaGuardia
14 Airport.

15 (5) LOW-COMPETITION AIRPORT.—The term
16 “low-competition airport” means an airport that the
17 Secretary determines—

18 (A) is not a large hub; and

19 (B) has substantially less service than av-
20 erage or substantially higher than average air-
21 fares.

22 (6) NEW ENTRANT AIR CARRIER.—The term
23 “new entrant air carrier” means a person that does
24 not hold a slot at a high-density airport and has not

1 sold or given up a slot at that airport after Decem-
2 ber 16, 1985.

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

5 (8) SECRETARY.—The term “Secretary” means
6 the Secretary of Transportation.

7 (9) SLOT.—The term “slot” means the oper-
8 ational authority to conduct one landing or takeoff
9 operation each day during a specific hour or 30
10 minute period at a high-density airport.

○