

***Via Email***

Ministerie van Infrastructuur en Waterstaat  
Attn Her Excellence Mrs. Cora van Nieuwenhuizen-Wijbenga  
Postbus 20901  
2500 EX Den Haag

30 May 2018

RE: Proposed Amendments to Besluit Slotallocatie

Dear Mrs. van Nieuwenhuizen-Wijbenga,

American, Delta and United (“the joint carriers”) appreciate the opportunity to jointly comment on the proposed changes to the Besluit Slotallocatie. The joint carriers have extensive operations in The Netherlands and therefore have a strong vested interest in the subject matter of the proposed revisions. We support the comments that IATA submitted but wish to supplement them with some brief observations of our own.

First, we believe that continued airline and ATM involvement is critical to the success of the decision-making process for making capacity declarations at Schiphol. In the 2002 Aviation Act, the Dutch legislature established joint airline/airport/ATM responsibility for capacity declarations on the ground that collective engagement of all stakeholders is the most effective way to mitigate severe slot constraints at Schiphol. In our view, the current system has worked well in balancing the interests of stakeholders and the consultation paper does not advance persuasive arguments for its proposal to radically change the process. Indeed, Article 6.1 of Regulation 95/93 on the allocation of slots at Community airports mandates continued airline and ATM involvement because it requires that capacity declarations be based upon objective analysis. Assigning responsibility to the airport alone is inconsistent with this requirement because it allows a non-neutral party to make unilateral and subjective decisions without the involvement of other key stakeholders. For the foregoing reasons, we respectfully request the Dutch Government to withdraw its proposal to change the current process.

Second, the joint carriers welcome the proposal to introduce a mandatory capacity analysis. This analysis will help to ensure that the declared capacity is updated to match operational realities. In our view, however, the analysis should be conducted on a seasonal basis rather than in three year increments as proposed. A seasonal analysis will help to optimize the use of capacity and to better incorporate operational and regulatory changes into the capacity declaration.

Third, the consultation document indicates that the Minister can intervene to order the airport to withdraw night slots. Any rule that incorporates this power should require the Minister to address a number of important policy and legal concerns before issuing such an order. In particular, the exercise of this power must be consistent with:

- The use-or-lose rule under Regulation 95/93. This rule recognizes that airlines make significant, long-term capital investments when launching a service and awards this commitment by providing grandfather rights to the slots in subsequent seasons provided the airline satisfies prescribed usage requirements. The use-or-lose rule is at the heart of the Worldwide Slot Guidelines, the global standard for slot allocation.
- The “fair and equal opportunity” to compete guarantee enshrined in Article 2 of the U.S.-EU Air Services Agreement (“Agreement”) and indeed in other air services agreements to which The Netherlands is a party. An order to withdraw night slots would violate this guarantee if it disproportionately impacted U.S. carriers.
- The balanced approach to noise management enshrined in ICAO Principles and in Article 15 of the Agreement. Under the balanced approach, the Dutch Government should not impose operating restrictions until it considers alternatives for mitigating potential noise impacts in close consultation with stakeholders. Article 15 of the Agreement legally obligates the Dutch Government to follow the balanced approach before taking any action to limit operating rights.

If the government does decide to confiscate night slots after addressing the above concerns, it should hold the airlines concerned harmless by (1) providing the carrier forced to surrender slots with alternative slots of equal commercial value; and (2) ensuring that the cancellations concerned will be deemed by legislative instrument to be “extraordinary circumstances” within the meaning of Regulation 261/2004 on denied boarding, cancellations and long delays, relieving airlines of the requirement to pay compensation.

Finally, the consultation indicates that the Minister may intervene to make other, unspecified binding decisions during the capacity declaration process. We would appreciate clarification on the precise decisions that the Minister is empowered to make, in what circumstances and the process for challenging or appealing them. This information will allow stakeholders to better anticipate these decisions and to prepare for their potential operational and commercial impacts.

We trust that you find these comments helpful. We look forward to continued engagement in the consultation process and are happy to meet to discuss these issues further at your convenience.

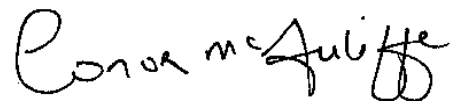
Signed by:



Robert A. Wirick  
American Airlines  
Managing Director  
Regulatory & International Affairs



Julie Oettinger  
Delta Airlines  
Managing Director  
Regulatory and International Affairs & Associate General Counsel



Conor McAuliffe  
United Airlines  
Managing Director  
European & Industry Affairs