



DEPARTMENT OF JUSTICE
Antitrust Division

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Kerry B. Long, Esq.
Chief Counsel
U.S. Department of Transportation
Federal Aviation Administration
800 Independence Ave, S.W.
Washington, DC 20591

Re: Proposed JFK Airport Delay Reduction Meeting

Dear Mr. Long:

This letter is written in response to your September 21, 2007 letter describing the planned format of a meeting of air carriers with the Administrator of the Federal Aviation Administration ("FAA") to discuss flight reductions at New York's John F. Kennedy International Airport ("JFK"). The meeting is being called because the Secretary of Transportation has determined, pursuant to 49 U.S.C. § 41722, that the meeting is necessary to reduce flight delays during peak hours of operation. You seek assurances that, provided the meeting and related activities are conducted as described in your letter, the Department of Justice would not seek to challenge as a violation of the antitrust laws any air carrier's attendance at or participation in the meeting or any carrier's unilateral actions taken to comply with an Order of the Administrator issued as a result of the meeting.

According to your letter, all carriers participating in the meeting will be advised that the meeting and all preparations for it are subject to the antitrust laws and that communications among carriers regarding competitively sensitive information, such as markets served, prices charged, and marketing plans, could result in a violation of the antitrust laws and lead to civil or criminal liability. At the beginning of the meeting, the Administrator (or his delegee) will announce that, pursuant to advice from the Department of Justice, no communication will be permitted by any air carrier representative in the presence of any representative of another air carrier regarding flight reductions at JFK or any other competitively sensitive subject, including but not limited to markets served, prices charged, and marketing plans.

Prior to the meeting, the Administrator will establish flight reduction targets, based on the number of flight operations scheduled for a representative business day. The Administrator will publish notice of these targets on the FAA website at least 48 hours prior to the meeting, as required by statute. The notice will specify the total number of reductions to be sought from the total number of flight operations conducted. The notice will not include carrier-specific limitations, targets or suggested reductions.

At the meeting, the Administrator will distribute a list of flights currently scheduled each 15-minute period from 6 a.m. to 11 p.m., indicate any periods that he considers to be severely congested, and provide general targets for flight reductions during those periods, which will not identify which carriers flights are targeted to be moved or eliminated. Each carrier will then be invited into a separate, confidential discussion with the Administrator during which the carrier will be asked to offer specific flight reductions or schedule changes, which shall *not* be contingent on reductions offered by another carrier or carriers.

After completion of the individual carrier sessions, the Administrator will revise the list of flights to reflect the individual discussions with the carriers. The carriers will again be given this list which will not identify flights by carrier. If the Administrator believes that severely congested time periods still exist, he may set revised targets and repeat the individual sessions with carriers.

If the Administrator determines that identifying carrier-specific targets is necessary to facilitate voluntary flight reductions and schedule modifications, he may advise each carrier separately and confidentially of flight reduction targets specific to that carrier, which information will *not* be given to any other carrier or carriers. The Administrator may also make a general assurance with respect to the overall proportionality of the flight reductions being sought by the FAA from carriers serving JFK.

The Administrator will develop and approve a proposed flight reduction plan and schedule reduction, which will be published in the Federal Register as a final order.

Importantly, the procedures do not provide for any meetings among the carriers without the FAA present. The procedures will not allow any discussion or negotiation among carriers about flight reductions, prices charged, or markets served. During the course of the meetings, carriers will not be told schedule reductions or modifications other carriers are offering or being asked to offer.

For these reasons, the Department is not presently inclined to initiate antitrust enforcement action against any carrier that participates in the FAA's flight reduction meeting and conducts itself in the manner described in your September 21 letter. This expresses the Department's current enforcement intention regarding the carriers' participation in the flight reduction meeting. The Department reserves the right to bring an enforcement action against any conduct that violates the antitrust laws.

Yours sincerely,



Thomas O. Barnett