

ACI EUROPE WORKING PAPER underpinning the revision of Regulation 95/93

Practices and Recommendations related to Double Dipping

June 2021

1. INTRODUCTION

- 1.1. In accordance with Article 8(2) of EU Regulation 95/93, henceforth also referred to as the 'Slot Regulation', airlines must use at least 80% of a slot series allocated to them in order to obtain historical precedence for these slots in subsequent equivalent seasons. If, however, the required threshold is not met, the coordinator may place the slots in the slot pool for reallocation to other airlines. This practice is also known as the 'use-it-or-lose-it' rule or '80/20 rule'.
- 1.2. Article 10(3) of the Slot Regulation, in conjunction with paragraph 8.7 of the Worldwide Airport Slot Guidelines (WASG) enables a practice called 'double dipping', whereby airlines are essentially awarded the '20% part' of the 80/20 rule twice, yet they still receive historic rights to the full number of slots initially allocated to them. In reality, therefore, the 80/20 rule comes down to a '64/36 rule' at airports where 'double dipping' is applied.
- 1.3. Due to the lack of detailed explanation of some allocation decisions, the extent to which this loophole is used in practice is also unclear. However, instances of 'double dipping' have reportedly occurred in the United Kingdom, France, Switzerland and Poland.

2. PROBLEM DEFINITION

- 2.1. With regard to double dipping, Article 10(3) of the Slot Regulation and paragraphs 8.7.2.2 and 8.7.3.1 of the WASG form the relevant policy framework. Although the WASG is not legally binding in the EU, the document often serves as the default reference in instances that are not explicitly addressed by the Slot Regulation.
- 2.2. Whereas the Slot Regulation only mentions one slot return deadline, the WASG recognizes two slot return deadlines, i.e. the Historic Baseline Date (HBD) and the Series Return Deadline (SRD). The HBD is defined as "*the reference date used for the 80% usage calculation to determine historic precedence, being 23:59 UTC on 31 January (summer) and 23:59 UTC on 31 August (winter)*", according to which any individual slots the airline does not intend to use should be returned before specified timings. The SRD explicitly intends to give airlines the opportunity to return to the coordinator entire slot series that they cannot use before HBD, and is defined as "*the date by which airlines must return series of slots that they do not intend to operate*".
- 2.3. Article 10(3) of the Slot Regulation provides the following: "*Slots allocated to an air carrier before 31 January for the following summer season, or before 31 August for the following winter season, but which are returned to the coordinator for reallocation before those dates shall not be taken into account for the purposes of the usage calculation*". Thus, the slot return deadline covered by the Slot Regulation corresponds with the HBD, yet the Slot Regulation is unclear about the details of how pre-HBD and post-HBD cancellations affect eligibility for historic precedence.
- 2.4. In absence of clear guidance, coordinators may revert to paragraph 8.7 of the WASG, which was introduced in 2007 and paved the way for the current practice of 'double dipping'.¹ Paragraph 8.7.2.2 of the WASG provides: "*The cancellation of periods of less than 5 consecutive weeks does not reduce the period eligible for historic precedence, provided the total number of cancellations is 20% or less of the period between the first and last date of the series of slots.*" Paragraph 8.7.3.1 furthermore states: "*All cancellations made after the Historic Baseline Date are considered as non-utilization of the series of slots in the 80% usage calculation (...)*". It follows that the HBD functions as the cut-off date for airlines to make double-dip cancellations.

¹ Although temporarily terminated as per the November 2020 WASB Agreement on COVID-19 related slot alleviation for S21, double dipping is still possible under the latest version of the WASG.

- 2.5. The combination of the above-cited paragraphs of the WASG allows airlines to request slot series for a full season, but to make cancellations to that same slot series before HBD up to 20% of the individual slots, without the cancellations counting against the 80% threshold.. Airlines may again cancel up to 20% of the slot series they hold post-HBD for commercial reasons. Thus, the net effect of the 'double dip loophole' is a circumvention or dilution of the intent of the original 80/20 rule by permitting two rounds of cancellations of up to 20% of the slot series in each round.
- 2.6. Cancellation flexibility both pre- and post-HBD means that airlines can retain historic slots having operated as little as 64% of slots. For example, an airline may hold a 25-week summer slot series before HBD of which it may cancel 5 individual slots (within the 20% pre-HBD rule). It then only needs to operate 16 (=80%) of the remaining 20 slots to earn historic rights to the full 25-week slot series. Obviously, the % of operated slots needed to qualify for historic precedence depends on the length of the historic series.² A series of 30 slots can qualify if 10 slots are cancelled, i.e. if only 20 out of 30 slots in the series (66.7%) are operated.
- 2.7. The use of double-dip flexibility is not just theoretical. According to ACL (2019), whilst the percentages of flights operating under the 80% threshold due to 'double dipping' may appear low (up to 5%), that equates to 60 daily slots per year which retain historic rights. These slots arguably should not have retained these rights under either the 80/20 rule or the normal rules for alleviation in cases of force majeure.
- 2.8. The cancellation flexibility offered by 'double dipping' is especially open to abuse by airlines with large slot holdings, who can strategically cancel a number of series fragments and maintain more historic rights than operated in any part of the season. Strategic use of the cancellation flexibility is a misuse of the slot process that harms the "fullest and most flexible use of limited capacity", one of the key objectives of the Slot Regulation reflected in its Preamble. With airports becoming more congested, every marginal gain in slot utilization allows more airlines to operate or expand their services at congested airports.
- 2.9. Moreover, 'double dipping' conflicts with Article 8(2) of the Slot Regulation, which requires that historic precedence shall only be granted if *"the air carrier can demonstrate to the satisfaction of the coordinator that the series of slots in question has been operated (...) for at least 80% of the time during the scheduling period for which it has been allocated. In such case **that series** of slots shall entitle the air carrier concerned **to the same series** of slots in the next equivalent scheduling period,..."*.

3. RECOMMENDATIONS

- 3.1. To make best use of increasingly scarce capacity at already congested airports, it is essential that the calculation of historic precedence and the definition of the series entitled for this priority are clarified in such a way to prevent airlines from pursuing methods to retain slots which are contrary to their proper use. This should start with ensuring that 80% means 80% by removing the opportunities for 'double dipping'.
- 3.2. To that end, ACI EUROPE calls for the removal of any ambiguity in the Slot Regulation regarding the practice of 'double dipping'. Article 10(3) of the Slot Regulation should be amended in such a way that only the parts of the slot series that have not been returned before either 31 January or 31 August shall be eligible for historic precedence.

² A series of slots is defined as slots allocated at the same or approximately same time on the same day for a date span of at least 5 continuous weeks. The minimum number of operations in a series required to double dip is 6, consisting of 1 cancellation pre-HBD to meet the minimum series length requirement of 5 weeks, and 1 cancellation post-HBD to make 4 weeks. A series of 5 weeks only allows for 1 cancellation in total, as 20% of 4 is less than 1.