



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 2nd day of March, 2017

Joint Application of

**DELTA AIR LINES, INC.
AEROVIAS DE MEXICO, S.A. DE C.V.**

Docket DOT-OST-2015-0070

**Under 49 U.S.C. §§ 41308 and 41309 for
Approval of and Antitrust Immunity for
Alliance Agreements**

ORDER TO SHOW CAUSE

I. SUMMARY

By this Order, the Department is tentatively proposing to assign 24 slot-pairs at Mexico City's Benito Juarez International Airport (MEX) and four slot-pairs at New York's John F. Kennedy International Airport (JFK). These slot-pairs are being divested by Delta Air Lines, Inc. (Delta) and Aerovias de Mexico, S.A. de C.V. (Aeromexico) (together, the Joint Applicants) as a condition of a grant of antitrust immunity from the Department (see Order 2016-12-13, December 14, 2016) for a joint venture covering air transportation between the United States and Mexico.

II. BACKGROUND

On March 31, 2015, the Joint Applicants filed an application requesting approval of, and antitrust immunity for, a joint venture covering air transportation between the United States and Mexico. On June 15, 2016, the Department determined the record was substantially complete and established a procedural schedule. On December 14, 2016, the Department issued a Final Order approving and granting antitrust immunity for the arrangement, subject to conditions, including a two-phase divestiture of slots at MEX and JFK to certain eligible carriers as determined by the Department.¹ The purpose of the divestitures, as described in Orders 2016-11-2 and 2016-12-13, is to ensure sufficient competition in the environment in which the joint venture will operate, as well as to alleviate the competitive harm likely to result from the transaction. On December 21, 2016, the Joint Applicants notified the Department that they accepted the Department's conditions, including the slot divestitures.²

¹ See Order 2016-11-2 at 25; Order 2016-12-13 at 23.

² See Notice of the Joint Applicants, DOT-OST-2015-0070-0100, Dec. 21, 2016.

On January 6, 2017, the Department issued Order 2017-1-6, instituting a competitive selection proceeding to assign the divested slots. Applications were due January 23, 2017, and answers and replies were due January 30, 2017 and February 6, 2017, respectively. In response to that Order, the Department received applications from six carriers.

III. APPLICATIONS

A. Alaska

Alaska Airlines, Inc. (Alaska) applied for four slot-pairs at MEX, all in Phase One. Alaska is seeking two slot-pairs to operate daily year-round flights from Los Angeles International Airport (LAX), one slot-pair to operate a daily year-round flight from San Francisco (SFO), and one slot-pair to operate a daily year-round flight from San Diego (SAN). The company would be a new entrant to Mexico City, having last served LAX-MEX in September 2015.

For the LAX-MEX slot-pair application, Alaska would operate one mainline flight (B737-900; 178 seats) and one regional jet flight (E-175; 76 seats). Alaska, along with recently acquired Virgin America, would provide connections from MEX to 30 U.S. cities via LAX. With the SFO-MEX slot-pair, Alaska would operate one daily mainline flight (B737-900; 178 seats). Along with Virgin America, the company would provide connections to five U.S. cities via SFO. With the SAN-MEX slot-pair, Alaska would operate one daily regional jet service (E-175; 76 seats).

B. Southwest

Southwest Airlines, Inc. (Southwest) applied for four slot-pairs at MEX. The company applied for two slot-pairs in order to operate two Houston-Hobby (HOU)-MEX round trips in Phase One. If these slots cannot be awarded in Phase One, Southwest requests they be considered for assignment in Phase Two. Southwest currently operates three daily HOU-MEX round trips, but states that one of the flights operates at non-slot-controlled, uneconomical times. With the first slot-pair, Southwest would move this schedule to a commercially viable “remain overnight” (RON) schedule. Southwest would use the second HOU-MEX slot-pair to add an additional flight in the market. With these changes, Southwest would operate four daily round trips in the HOU-MEX market. Southwest also applied for two additional slot-pairs for Phase Two consideration: one slot-pair for a Fort Lauderdale (FLL)-MEX service and one for LAX-MEX service. All flights would be operated on a daily, year-round basis, utilizing 143-seat 737-700 aircraft. Southwest states that flights from these gateways to MEX enable connectivity to a total of 50 destinations in the United States. Southwest is prepared to launch these new flights within 90 days of receipt of all necessary permissions.

C. JetBlue

JetBlue Airways applied for a total of four slot-pairs under Phase One. JetBlue says it will use these slots for twice-daily FLL-MEX service and for twice-daily Orlando (MCO)-MEX service. For Phase Two, JetBlue requests two slot-pairs to operate LAX-MEX service.³ All services

³ JetBlue’s original proposal was to operate service from Long Beach. After a decision by the Long Beach City Council to not build a federal inspection facility at the airport, JetBlue modified its request to operate between LAX and MEX. *See* Notice of JetBlue Airways Corporation, DOT-OST-2015-0070-0110, Jan. 26, 2017.

would be operated with 162-seat A320 aircraft. JetBlue states that other carriers operating in the Florida-MEX market have a relatively balanced point of sale between Florida and MEX, yet for JetBlue only 31 percent of its sales originate in Florida. JetBlue argues that its continued operation of these suboptimal slots reflects its long-term commitment to the Mexico City market. JetBlue reasons that the requested slots will improve the commercial viability of its existing MEX service and allow JetBlue to continue expanding in Mexico, which is important to its growth plans. For Phase Two, JetBlue requests one slot-pair to operate from Los Angeles (LAX) to MEX. All services would be operated with 162-seat A320 aircraft.

D. Volaris

Concesionaria Vuela Compania de Aviacion, S.A.P.I. de C.V. dba Volaris (Volaris) applied for eight slot-pairs at MEX, to serve nine markets. Additionally, Volaris applied for two slot-pairs at JFK. In total, Volaris is proposing new service in 10 markets. Volaris would operate each of the services with a 179-seat Airbus A320 aircraft.

In Phase One, Volaris has applied for daily MEX-JFK, daily MEX-San Antonio (SAT), daily MEX-Washington-Dulles (IAD), daily MEX-Chicago-O'Hare (ORD), and daily MEX-LAX services. Independent of this proceeding, Volaris is planning to launch daily MEX-JFK service in March 2017; the slot-pair it has requested would enable its second flight in the market. Currently, Volaris offers twice-daily service in both the MEX-ORD and MEX-LAX markets; the requested slot-pairs would enable its third flights in those markets.

In Phase Two, Volaris has applied for daily service from MEX to Oakland (OAK) and Denver (DEN), as well as daily service from JFK to Cancun (CUN). Volaris also proposes splitting one slot-pair, operating three-times-weekly service from MEX to Ontario (ONT), and four-times-weekly service MEX to San Jose (SJC). Volaris states its willingness to a slot-pair requested in Phase One in Phase Two.

E. VivaAerobus

Aeroenlaces Nacionales, S.A. de C.V. d/b/a/ VivaAerobus (VivaAerobus) applied for nine slot-pairs at MEX, seeking three slot-pairs in Phase One and six slot-pairs in Phase Two. In Phase One, VivaAerobus intends to operate daily service from MEX to LAX and Las Vegas (LAS) utilizing two slot-pairs, while using the remaining slot-pair to operate to SAT four-times-weekly, and OAK three times weekly. In Phase Two, VivaAerobus requests six slot-pairs for an additional daily service to LAX, double daily service to JFK, daily service to Houston (IAH), daily service to ORD, and the remaining slot-pair used at SAT three times weekly, and OAK four-times-weekly, bringing those cities up to daily service. At JFK, two Phase Two slot-pairs are requested to coordinate with the MEX slots also requested in that phase.

VivaAerobus notes that its model is point-to-point, and offers no connecting flight ticketing ability in Mexico City; however, passengers can "self-connect" by purchasing two separate tickets, as well as use connecting bus services owned and operated by the carrier's owner, Grupo-IAMSA, connecting passengers at over 300 bus stations throughout Mexico. The carrier argues that its ultra-low-cost operational structure would provide significant downward pressure on fares and provide the marketplace with a product not currently offered at the price points proposed.

F. Interjet

ABC Aerolineas, S.A. de C.V., d/b/a Interjet (Interjet) requested a single Phase One slot-pair assignment at JFK to accommodate a daily 1625 arrival from MEX and a corresponding 1740 departure to MEX. In the event that its request cannot be accommodated, the carrier, alternatively, requests a Phase One JFK slot-pair for an adjusted arrival and departure time. If the Department is unable to assign Interjet either slot-pair in Phase One, the same priority and times are requested for assignment in Phase Two.

Interjet states that its request will provide a cost-effective alternative to the Joint Applicants' JFK-MEX services. Furthermore, Interjet believes that its services will appeal to both business and leisure travelers in markets beyond Mexico City as a result of its extensive network at MEX. The new services will be in addition to existing services the carrier has offered since August of 2012, which are currently at suboptimal times.

IV. RESPONSIVE PLEADINGS

A. Alaska

Alaska filed an answer arguing that it should receive all four of its requested MEX slot-pair requests because its proposals satisfy the Department's goals of increasing competition with the Delta/Aeromexico Joint Venture, benefiting consumers, and lowering fares. Alaska's case for its four slot proposals focuses on its being the only new entrant at MEX of all the other applicants, its low-fare direct pricing competition versus the Joint Applicants in the LAX-MEX and SFO-MEX markets, and its large west coast route network. Alaska argues that with its recent acquisition of Virgin America, it would connect MEX to over 30 cities behind/beyond LAX, SFO, and SAN, thereby providing additional consumer benefits. Finally, Alaska states that it would be the only carrier providing nonstop service in the SAN-MEX market. The carrier argues that Southwest and JetBlue are more interested in shoring up their existing service, as opposed to adding new direct competition.

Alaska argues against Volaris and VivaAerobus mainly because of the comparatively larger number of slots those carriers requested. Alaska argues that Volaris and VivaAerobus could simply adjust their existing MEX slot-pairs at any time to serve their requested markets. Alaska also noted Volaris' and VivaAerobus' lack of connectivity behind and beyond their proposed routes, and their lack of Global Distribution System (GDS) use for reservations, which limits its ability to compete for some passenger segments. Finally, Alaska believes that the Department should assign all slot-pairs requested by U.S. carriers before assigning any slot-pairs to Mexican carriers.

In reply comments, Alaska defended itself from other carriers' criticism of its history at MEX, during which Alaska transferred two slot-pairs to American Airlines in September 2015. Alaska highlighted that they have served the transborder market since 1988, and have increased their capacity to other Mexican destinations by 36% since 2010. Alaska explained that it is no longer the holder of the MEX slots now being operated by American for the LAX-MEX service previously operated by Alaska. Alaska agreed with Southwest, in that the U.S. applicants should

be considered first over the Mexican LCCs, because of Volaris' and VivaAerobus' existing slot holdings at MEX.

B. JetBlue

JetBlue filed an answer affirming its support of the Department's Open Skies policy and arguing that the interest in slots in this proceeding is evidence of the demand for MEX access. JetBlue suggests that the Department split the slot requests equally between U.S. and Mexican carriers, reasoning that Mexican carrier participation is crucial to implementing a slot remedy benefitting airlines and consumers in both countries. JetBlue also notes the substantial MEX slot holdings that each of the Mexican carrier applicants possesses, which have allowed these carriers to offer transborder services at peak times. JetBlue states that Southwest has slots for two viable Mexico City flights per day. It also notes that Alaska, which was awarded Mexico City slots in 2005, transferred these slots to American Airlines in 2015 with Department approval and retains a codeshare with American on the route. JetBlue questioned whether Alaska still owns the slots it transferred to American, challenging Alaska's assertion that it lacks access to MEX because slots are not available.

JetBlue comments that the Department should consider low-cost carriers differently from the ultra-low-cost carriers such as Volaris and VivaAerobus. In particular, JetBlue reasons that VivaAerobus should receive the lowest priority in slot awards because it offers the fewest consumer benefits, including the inability to offer connecting itineraries. JetBlue states that awarding its priority slot requests would free up times that could be used by VivaAerobus in its request for off-peak slots. Similarly, JetBlue posits that the Department should not award off-peak slots as requested by Volaris.

In its reply comments, JetBlue reiterated its belief that the Department assign the 24 remedy slot-pairs equally between U.S. and Mexican carriers. JetBlue challenges VivaAerobus' argument that there is a minimal market for the FLL-MEX route given that FLL is part of the larger Miami metropolitan region that has extensive ties with Mexico. JetBlue states that operations by Delta/Aeromexico, American, Interjet and Volaris, with up to 13 daily flights between Miami and MEX, reinforce its argument of a strong market between Miami and Mexico. While VivaAerobus needs to bus in passengers as a form of online connecting services, JetBlue has a significant presence in South Florida to serve the local market. JetBlue argues that VivaAerobus is not well-positioned to provide vigorous competition in the market, and that VivaAerobus could likely obtain off-peak slots at MEX without using the slots divested in this proceeding.

Regarding Alaska, JetBlue points out that Alaska transferred its MEX slots to American, and disputes Alaska's claim that it does not have any LAX-MEX services, noting that Alaska itself said that it currently services the Los Angeles-Mexico City market through its codeshare with American. JetBlue questions whether Alaska's request is procedurally eligible to receive remedy slots given that Alaska's request involves flights operated by carriers that are ineligible for this proceeding. Despite its contentions that Alaska is already a presence in the market, JetBlue supports Alaska providing service under its own brand.

C. Southwest

Southwest, in its answer, asks that the Department assign all MEX slot-pairs requested by U.S. carriers prior to assigning any slot-pairs to Mexican carriers that applied. It argues that the two Mexican LCCs that have applied for MEX slot-pairs, VivaAerobus and Volaris, already have large pools of slots at MEX. Southwest asserts that the carriers can simply reassign those from domestic routes to transborder routes. Southwest notes that these and other Mexican LCCs such as Interjet hold 193 MEX slot-pairs during slot-controlled hours, while U.S. LCCs have only two. Further, Southwest notes that Volaris provided forecasts in its application that included excessive circuitry in connecting markets over MEX, thereby rendering its forecasts inaccurate. Southwest also notes that VivaAerobus has served US markets inconsistently since 2008, thereby questioning the carrier's ability to deliver substantial consumer benefits. Southwest also reasserts that its proposal will provide the greatest consumer benefits due to its history of promoting low fares, expanding market sizes, and delivering a different business model to the market.

In reply comments, Southwest disputes VivaAerobus' assertion that Southwest should not receive a slot-pair to begin FLL-MEX service due to the small Mexican-American population in Fort Lauderdale. Southwest asserts that the Mexican-American population for the entire Miami-Fort Lauderdale metropolitan area should be considered when evaluating market size, a practice in line with the Department's precedent, making it the second largest transborder market. Southwest also asserts that Volaris, in its answer, proved that it has underutilized slots at MEX which it could use to begin all of its requested transborder services.

Southwest also takes issue with some of Alaska's assertions. Southwest notes that nowhere in Alaska's filings did it mention that it served the LAX-MEX route until 2015, when it transferred its authority on that route to American. Southwest also contends that Alaska would not be a new entrant on the LAX-MEX route, as it currently codeshares with American's LAX-MEX service. Southwest also disputes the number of connections that Alaska would offer behind Los Angeles. Southwest contends that Alaska's argument that its LAX-MEX service will have more impact on competition than Southwest's additional HOU-MEX frequencies is unfounded.

D. Volaris

In its answer, Volaris made no objection to the applications of Interjet or those of any U.S. carrier. However, Volaris criticizes VivaAerobus' application. Volaris argues that VivaAerobus' previous transborder services have been inconsistent and unsuccessful; it does not utilize all of its currently assigned MEX slot-pairs; it did not participate in the Department's proceeding until the slot assignment phase; and, the carrier's ultra-low-cost model will not work in the U.S. due to higher operating costs at U.S. airports. Volaris also notes that VivaAerobus did not explain its forecasting methodology and doubts that VivaAerobus will be able to achieve the forecasted 76 to 85 percent load factors shown in its application, when they currently report 59 percent load factors in the last year on routes to the U.S.

In its reply, Volaris disputes Southwest's argument that Volaris' passenger forecast excluded connecting traffic. Volaris argues that Southwest's claim that it could redeploy existing slots would force it to further reduce its own domestic service to an unacceptable level. Volaris notes that it has done so in the past in order to add service to JFK, MIA, and IAH, demonstrating its

commitment to transborder service. Volaris argues that further self-funding of transborder growth would come at the expense of its domestic network.

Volaris agrees with JetBlue's position that VivaAerobus should not be awarded slots in this proceeding. Volaris argues that VivaAerobus lacks any U.S. authority from MEX, and has not properly applied for such authority; has never served the U.S. from MEX; and, has never served the vast majority of U.S. cities it now proposes to serve. Volaris also argues that VivaAerobus' connection to bus services through Grupo-IAMSA is irrelevant, as there are 779 bus operators in Mexico. Furthermore, Volaris argues that on-site bus terminals at the airports in Cancun, Mexico City, Monterrey, and Tijuana obviate the need for the exclusive VivaAerobus/IAMSA relationship. Volaris also argues that after Irelandia divested its 49 percent ownership stake in Viva in 2016, VivaAerobus has failed to update its carrier fitness information required after a major change in ownership and composition of the board of directors. Lastly, Volaris reiterates its argument that VivaAerobus' service history from Mexico to the United States has been inconsistent and that scarce Mexico City slots should not be assigned to a carrier with such a history.

In response to Alaska, Volaris argues that its lack of participation in a GDS is irrelevant, as its passenger numbers have grown year-over-year, and that, in addition to leisure passengers, cost-conscious business travelers also take advantage of Volaris' low fares. Volaris also argues that its application for a third Mexico City-Los Angeles frequency is warranted, as the flight times would compete directly with flights operated by the Joint Applicants. Volaris also notes that it has no objection to moving its JFK-MEX flight 31 minutes earlier, per Interjet's suggestion, in order to comply with the hourly divestiture limits established at JFK in the Final Order.

E. VivaAerobus

VivaAerobus argued in its Answer that it is the best suited to satisfy the Department's objectives by offering a sophisticated ultra-low-cost business model that meets the needs of the price-sensitive "visiting friends and relatives" segment of the traveling public. VivaAerobus argues that a fair approach to the slot assignment would be to grant each requestor its first three Phase One MEX slot requests, and both JFK slot requests by Interjet and Volaris. Such an assignment will allow six different carriers to serve 10 U.S. cities from Mexico City. VivaAerobus notes that this would introduce Alaska to the MEX-LAX market, which would compete with the business travel market segment of Delta/Aeromexico. The carrier further argues that granting it all slot-pairs as requested is pro-competitive as VivaAerobus is the lowest cost operator in Mexico and the Americas.

VivaAerobus states it opposes the additional requests for MEX slot-pairs for flights to Fort Lauderdale, operated by JetBlue. The carrier argues that Fort Lauderdale does not have the population of other cities proposed in this proceeding, and the slots should be assigned where the Joint Applicants have a more significant presence; granting more than one slot-pair to Fort Lauderdale, therefore, would be a misuse of scarce resources. VivaAerobus concedes that JetBlue's proposed two frequencies to Orlando could increase competition with the Joint Applicants.

In its reply, VivaAerobus further asserts that it is strongly positioned to maximize competition and serve the flying public if it is awarded the requested slot-pairs, due to the unique relationship it has with the IAMSА bus system. VivaAerobus disagrees with Southwest's assertion that the U.S. carriers should be granted preference over Mexican carriers on the premise that Mexican carriers hold the majority of slots at MEX. VivaAerobus argues that it is logical for Mexican carriers to have the majority of slots at the country's largest airport, and the vast majority of those slots are used for domestic service, not international.

VivaAerobus concedes that it had start-up issues in the past, but this should not be held against the carrier because of heavy investments to improve management, technology, and its aircraft. The carrier notes that it has transitioned to an all Airbus fleet, with orders for additional aircraft in place. It has also installed new reservations and revenue management systems, and has updated its website. VivaAerobus states that its fares are now found on travel agency websites and metasearch engines. VivaAerobus reiterates its position that Phase Two JFK, IAH, OAK, LAX, SAT/OAK, and ORD slot requests should be granted, creating competition against the Joint Applicants and Volaris.

F. Interjet

Interjet, in its answer, states that only two requests have been made for the two available slot-pairs at JFK in Phase One: one by Interjet and the other by Volaris. Interjet believes the Department should award Interjet's request and move Volaris' requested slot times at JFK 31 minutes earlier in order to accommodate its request without violating the divestiture limits at JFK. Adjusting the time would prevent the departure slot time from falling within the 1500 to 2059 time period for which only two slots can be awarded in any phase.

In its reply, Interjet states that Volaris and VivaAerobus, both of which also seek JFK slots, along with JetBlue filed pleadings supporting Interjet's Application for Phase One slots at JFK and that no carrier objected to Interjet's request.

V. OTHER COMMENTS

A number of civic parties filed pleadings in support of the various applicants. A number of California officials, businesses, and civic organizations filed in support of Alaska's proposed services to MEX from LAX, SFO, and SAN. The Chicago Department of Aviation filed in support of Volaris' proposed ORD-MEX service; the Metropolitan Washington Airports Authority and the Washington Airports Task Force filed pleadings in support of Volaris' application for daily IAD-MEX service; Ontario International Airport filed in support of Volaris' proposed thrice-weekly service; the City and County of Denver filed in support of Volaris' application for DEN-MEX service; the City of Houston filed an answer in support of both Southwest's HOU-MEX service, as well as VivaAerobus' IAH-MEX service; and the Port of Oakland filed pleadings supporting VivaAerobus' application for OAK-MEX, as well as for Volaris' application for four-times-weekly service in the same market.

VI. REMEDY STRUCTURE

A. Phase One Slots

Initially, 14 MEX slot-pairs and two JFK slot-pairs (the Phase One slots), must be transferred by the Joint Applicants to the carriers chosen by the Department through this proceeding.

B. Phase Two Slots

The remaining 10 MEX slot-pairs and two JFK slot-pairs (the Phase Two slots) also will be assigned through this proceeding; however, the carriers we select to obtain the Phase Two slots must demonstrate to the Department that they have exhausted reasonable efforts to acquire the slots themselves through the respective airport's normal allocation process before the Joint Applicants will be required to transfer them. Phase Two must be completed in time for slots to be transferred for use in the IATA Northern Summer 2018 scheduling season.⁴

C. Eligible Carriers

The Final Order established lists of carriers eligible to receive slots at each airport.⁵ At MEX, the carriers are: Alaska, Southwest, JetBlue, Frontier, Sun Country, Virgin America, Allegiant, Spirit, Hawaiian, Volaris, and VivaAerobus. At JFK, the carriers are: Alaska, Southwest, Frontier, Sun Country, Virgin America, Allegiant, Spirit, Hawaiian, Interjet, Volaris, and VivaAerobus.

D. Protected Hours

At MEX, the Final Order establishes an hourly divestiture limit of six slots per hour; however, the Joint Applicants have the option to protect up to two non-consecutive hours in which they will not be required to divest more than four slots. The Joint Applicants filed a notice in the docket on January 5, 2016, designating the hours of 0900-0959, and 1500-1559 as their protected hours.⁶ At JFK, the Final Order established that the Joint Applicants would only be required to divest two slots in the peak hours at JFK of 1500-2059.⁷

VII. DECISIONAL CRITERIA

As stated in Order 2017-1-6, the Department crafted its remedy to provide access to the slot-controlled JFK and MEX airports and to address competitive issues in the U.S.-MEX market, including the JFK-MEX market that was identified as an overlapping market of concern. Accordingly, in deciding among the applications received, the Department explained that it would select proposals that provide the maximum competitive benefits possible from new

⁴ The IATA Slot Conference for the Northern Summer 2018 scheduling season will take place November 7-10, 2017. If selected carriers have made the filings required by the respective slot coordinator(s) and have not received slots by seven business days following the conclusion of the conference (*i.e.*, November 21, 2017), we will consider them to have exhausted reasonable efforts and the divestiture requirements will obtain.

⁵ See Order 2016-11-2 at 25; Order 2016-12-13.

⁶ See Joint Applicants' Notice, Jan. 5, 2017, DOT-OST-2015-0070-102.

⁷ See Order 2016-12-13 at 25.

(preferably daily) services to/from JFK and MEX, taking into account a carrier's ability to exercise competitive discipline by:

- Serving a monopoly and/or nonstop overlap route, including JFK-MEX;
- Providing network benefits, including behind/beyond connections, as well as service to communities without existing nonstop service to the slot-controlled airport; and/or
- Enhancing the quality of competition, such as by offering additional frequencies in major markets or introducing the benefits of new business models.

VIII. TENTATIVE DECISION

The Department has tentatively decided upon the following slot assignments:

At MEX:⁸

- **Alaska:**
 - 2 slot-pairs for service to LAX – Phase One
 - 1 slot-pair for service to SFO – Phase One
 - 1 slot-pair for service to SAN – Phase One
- **JetBlue:**
 - 2 slot-pairs for service to FLL – Phase One
 - 2 slot-pairs for service to MCO – Phase One
 - 2 slot-pairs for service to LAX – Phase Two
- **Southwest:**
 - 2 slot-pairs for service to HOU – Phase One
 - 1 slot-pair for service to FLL – Phase Two
 - 1 slot-pair for service to LAX – Phase Two
- **Volaris:**
 - 1 slot-pair for service to SAT – Phase One
 - 1 slot-pair for service to JFK – Phase One
 - 1 slot-pair for service to LAX – Phase One
 - 1 slot-pair for service to DEN – Phase Two
 - 1 slot-pair for service to IAD – Phase Two
 - 1 slot-pair for service to SJC – Phase Two
 - 1 slot for service to ONT – Phase Two⁹
 - 1 slot for service to ORD – Phase Two
 - 1 slot for service to OAK – Phase Two
- **VivaAerobus**
 - 1 slot-pair for service to LAS – Phase One
 - 2 slot-pairs for service to JFK – Phase Two

⁸ Specific slot times can be found in Table 1 in Appendix A. When applying the provisions of Appendix B, section 2.f, the Joint Applicants must take into account Alaska's aircraft rotation, as detailed in their application.

⁹ ONT will operate 3 times per week and SJC will operate 4 times per week. The Department is not granting the slot that Volaris requested for an arrival at MEX at 0655 as it is outside of the saturated hours at MEX.

At JFK:¹⁰

- **Interjet:**
 - 1 slot-pair for service to MEX – Phase One
- **Volaris:**
 - 1 slot-pair for service to MEX – Phase One
- **VivaAerobus:**
 - 2 slot-pairs for service to MEX – Phase Two

The Department's tentative assignment permits most of the proposals by all applicant carriers at both airports to be accommodated. With regard to MEX, the Department has tentatively decided to fully grant the requests of Alaska, JetBlue, and Southwest. We tentatively find that these carriers are the best positioned and most likely to provide the competition necessary to discipline the Delta/Aeromexico joint venture. These carriers best meet the second and third decisional criteria, namely providing substantial network benefits, including behind U.S. gateway connections, and enhancing the quality of competition in the market. We tentatively find that these carriers demonstrated the greatest need for commercially viable slots at MEX, because they have generally been unable to obtain them otherwise, as demonstrated in the record of the antitrust immunity (ATI) phase of this proceeding. The carriers are also well-capitalized, have demonstrated a commitment to providing service in the U.S.-Mexico transborder market, and possess strong, well-established networks.

The Department is also tentatively granting nearly all of Volaris' requests and a portion of VivaAerobus' request. We have tentatively determined that Volaris' service will provide valuable network benefits, particularly within Mexico, and will introduce a new business model to those markets it enters. We are tentatively granting a larger portion of Volaris' request based upon its significantly greater network offerings and its demonstrated ability to sustain transborder services. Volaris first entered the U.S. market in 2009 and has steadily increased its presence, now serving 20 U.S. cities connecting 48 U.S.-Mexico markets. Conversely, VivaAerobus currently offers only one U.S. destination and has never served the U.S. from Mexico City. The Department also notes that, contrary to its current claims regarding lack of access at MEX, VivaAerobus did not raise these issues on the record during the ATI-phase of this proceeding. Nevertheless, we are tentatively granting several of VivaAerobus' requests because they will provide a new business model in those markets and will exert competitive pressure, resulting in consumer benefits.

We note that Volaris' requests to serve ORD and OAK involved slot times at MEX that are in non-saturated hours. The Department is relying on the carrier to obtain those slots from the airport's slot administrator. By partially tentatively granting those requests, services to those communities may be included as well, essentially granting Volaris' full request.

At JFK, the decision is straightforward.¹¹ Two slot-pairs are available in both Phase One and Two. Only two slot-pairs were requested in Phase One: one by Interjet and one by Volaris, both

¹⁰ Specific slot times can be found in Table 2 in Appendix A.

for service to MEX. These requests meet the remedy's objectives and are uncontested. The Department therefore tentatively grants these requests. In Phase Two at JFK, there are three requests for two available slot-pairs. VivaAerobus requested two slot-pairs to serve MEX and Volaris requested one slot-pair to serve CUN. The Department has tentatively decided to award the two available slot-pairs to VivaAerobus to serve MEX. The Department specifically stated in the Final Order that it would give preference to requests for JFK-MEX service, which was identified as a nonstop overlap route of concern.¹²

The Final Order established that no more than two slots could be required to be divested by the Joint Applicants at JFK between the hours of 1500-2059. Our award of JFK slots to Interjet meets this limit.¹³ Our second award to Volaris would exceed the two-slot limit as Volaris seeks a 1530 JFK departure. In its answer, Interjet proposed that the Department slide Volaris' request 31 minutes earlier, resulting in a 1459 departure from JFK, outside of the protected hours.¹⁴ No parties opposed this suggestion and, in its reply, Volaris stated that it does not object to this proposed retiming.¹⁵ The Department therefore tentatively selects Volaris at this adjusted timing.

Both of VivaAerobus' JFK-MEX Phase Two requests, however, also require slots within the protected hours. Absent any statements on the record indicating the carrier's flexibility in adjusting its requested timings, we are requiring that VivaAerobus file a revised request in the docket, no later than the date established for answers, for its two daily JFK services that are outside of the 1500-2059 hours at JFK. When choosing revised times, VivaAerobus should also take into account the hourly slot divestiture limits at MEX when making its revised request.

The Department also reminds carriers of the requirement that sufficient access to facilities and services must also be made available at MEX and JFK in order to accommodate the new services, as detailed in the Final Order and Appendix B.¹⁶

IX. IMPLEMENTATION

Once the Department's tentative decision is made final, the Joint Applicants will have to enter into slot transfer agreements with the slot recipients and submit those agreements to the Department for approval. The slot transfer arrangements (including, but not limited to, the slot transfer agreements) should ensure that the recipient carriers receive slots that are free of any financial, operational, or other encumbrances, and that the recipients' desired start dates –

¹¹ Carriers receiving divested JFK slots, as well as the Joint Applicants as the current holder(s) of the slots, must apply to the FAA for a waiver from the Order Limiting Operations at JFK in order to permanently transfer the slots.

¹² See Order 2016-12-13 at 26.

¹³ Interjet requests a JFK arrival of 1625 and a JFK departure at 1740.

¹⁴ See Answer of ABC Aerolineas, S.A. de C.V., d/b/a Interjet, to Applications for Allocation of Slots at John F. Kennedy International Airport, DOT-OST-2015-0070-0127, Jan. 31, 2017 at 2.

¹⁵ See Consolidated Reply of Concesionaria Vuela Compania de Aviacion, S.A.P.I. de C.V. d/b/a Volaris, DOT-OST-2015-0070-0141, Feb. 7, 2017 at 15.

¹⁶ See Order 2016-12-13 at 22, 26; Appendix B section 2-i.

provided they are reasonable – are accommodated. Specifically, the transfer arrangements must provide for an unencumbered start-up period, such as a waiver from applicable use-or-lose rules. All parties are encouraged to approach the relevant authorities, including the slot administrators, to ensure proper transfer. Once the agreements are approved, the Joint Applicants must submit a notice in the docket indicating the date that the Phase One slot transfer agreements have been executed and approved by the respective slot coordinators, and the date that the joint venture will be implemented. The ATI will become effective once this and all other required notices have been received, and all requirements of the Final Order have been completed.

Recipients of Phase Two slots must submit a timely, written request to the appropriate slot administrator(s) for the slots detailing the slots requested, and should also file those requests in this docket.¹⁷ If they do not receive a complete response, or are not granted slots within a 60-minute window of their requests by November 21, 2017, the carriers must notify the Department and we will then consider that the competing airlines have exhausted all reasonable efforts to obtain slots.¹⁸ At that point, the Joint Applicants' obligation to transfer remedy slots as a condition of maintaining their antitrust immunity will be triggered. The Department will provide timely notice to the Joint Applicants if they are obligated to provide these remedy slots. It would be prudent for the recipient carriers to notify the Joint Applicants of their Phase Two timing requests to AICM and the FAA, and for the Joint Applicants to identify appropriate slots and prepare for a potential slot transfer, even before the November 21, 2017 deadline.

As noted in Appendix B, the parties are obligated to introduce services consistent with their proposals.¹⁹ In the event that carriers desire to change destinations, they must provide the Department with at least 14 calendar days' advance notice in writing. If the Department takes no action after 14 days, the new destination will be deemed approved.

Also, as noted in Appendix B, recipients are bound to adhere to the respective jurisdiction's use-or-lose requirements so that these valuable slots are not forfeited. The Department tentatively intends to permit only short-term leases of less than one IATA scheduling season in order to accommodate an operational need, as long as the slots continue to be used for transborder services. Recipient carriers will need to notify the Department of such leases. Carriers may trade the slots with other carriers, consistent with local airport rules, such as to improve operational times; however, the terms and conditions of the Department's Order(s) and the slot transfer agreements will apply to the newly acquired slots. If a carrier wishes to transfer a slot(s) permanently, it must notify all carriers deemed eligible in this proceeding that the slot(s) are available, with copies of such notifications to the Department.^{20,21} When it reaches an agreement to transfer with another eligible carrier, the carrier must notify the Department and

¹⁷ Carriers may submit a redacted version that omits any sensitive commercial information to the docket. However, they should submit an un-redacted version to the Director, Office of Aviation analysis.

¹⁸ See Order 2017-1-6, footnote 1 at 2.

¹⁹ See Appendix B, Section 2b.

²⁰ Eligible carriers are those listed in footnotes 59 and 61 of Order 2016-11-12.

²¹ All notifications in this section shall be made to the Director, Office of Aviation Analysis.

seek its prior approval before executing the transfer.²² The Department tentatively determines that no compensation will be permitted for the short-term lease, trade, or transfer of remedy slots at MEX.

These same restrictions and processes will apply to Phase Two assignments as well. If a carrier wishes to change the destination of a Phase Two assignment prior to acquiring the slot either from the slot administrator or through divestiture, the carrier must submit written notice to the Department 45 days prior to the start of the Summer 2018 IATA Slot Conference.²³ If the Department takes no action within 14 days of the notice, the request shall be deemed approved and the carrier may proceed with its request for the new destination. If a carrier no longer wishes to acquire a Phase Two slot it has been awarded through this proceeding, it must likewise notify the Department and all other eligible carriers at least 45 days prior to the start of the Summer 2018 IATA Slot Conference. When the carrier reaches an agreement with another eligible carrier to transfer the slot(s) (or the rights to the slot(s)), it must notify the Department and seek its prior approval before executing the transfer. As with Phase One slots, the Department intends to permit only short-term leases without compensation of less than one IATA scheduling season in order to accommodate an operational need, as long as the slots continue to be used for transborder services. Recipient carriers will need to notify the Department of such leases. Likewise, carriers may trade or transfer Phase Two slots without compensation to other eligible carriers, such as to improve operational times; however, the terms and conditions of the Department's Order(s) and the slot transfer agreements will convey to the newly acquired slots.

ACCORDINGLY:

1. We direct all interested parties to show cause why we should not issue a Final Order confirming the tentative findings and conclusions discussed herein. Objections or comments to our tentative findings and conclusions shall be due not later than seven business days from the service date of this Order, and answers to objections shall be due no later than seven business days thereafter;
2. We tentatively determine that the Joint Applicants shall transfer the 24 slot-pairs at Mexico City's Benito Juarez International Airport (MEX) and four slots pairs at New York's John F. Kennedy International Airport (JFK) that were required to be divested by Order 2016-12-13, at times and to carriers as described above and in Appendix A, and in accordance with the conditions described in Appendix B and the body of this Order.
3. We tentatively determine that the conditions described in the body of this Order and Appendix B will apply to recipients of the transferred slots or rights to slots, including any subsequent transferee(s) of slots or rights to slots assigned in this proceeding;
4. We direct VivaAerobus to file a revised request for its JFK slots in this docket no later than the date established for objections or comments; and

²² Permanent transfers can only be made to a carrier eligible to participate as an applicant in this proceeding.

²³ The Summer 2018 IATA Slot Conference begins on November 7, 2017.

5. We will serve this Order on all parties on the service list for this docket.

By:

SUSAN MCDERMOTT
Deputy Assistant Secretary for
Aviation and International Affairs

(Seal)

An electronic version of this document is available online at www.regulations.gov.

MEX Slot Tentative Assignments									
Carrier	Phase One			Phase Two					
	Market	Slot Time @ MEX	Count	Market	Slot Time @ MEX	Count			
Alaska	LAX	1400	1						
		1735	1						
	LAX	1800	1						
		1335	1						
	SFO	1635	1						
		1500	1						
	SAN	1245	1						
1850		1							
Southwest	HOU	2050	1	FLL	1245	1			
		0700	1		1340	1			
	HOU	1045	1	LAX	2200	1			
		1140	1		0750	1			
JetBlue	FLL	0925	1	LAX	1315	1			
		1030	1		1420	1			
	MCO	1101	1	LAX	1745	1			
		1206	1		1850	1			
	MCO	1438	1						
		1543	1						
	FLL	1603	1						
		1710	1						
VivaAerobus	LAS	1935	1				JFK	TBD	1
		1035	1					TBD	1
							JFK	TBD	1
								TBD	1
Volaris	JFK	0759	1	OAK	1850	1			
		1839	1						
	SAT	1200	1	DEN	1005	1			
		1720	1		1840	1			
	LAX	1000	1	ONT	2100	.5			
		1925	1						
					SJC	1100	1		
						2139	.5		
					ORD	1905	1		
					IAD	1100	1		
						2151	1		
Total Slots Phase One			28	Total Slots Phase Two		20²⁴			

²⁴ Volaris will use one Phase Two slot to operate ONT three days per week and SJC four days per week.

JFK Slot Tentative Assignments						
Carrier	Phase One			Phase Two		
	Market	Slot Time @ JFK	Count	Market	Slot Time @ JFK	Count
Interjet	MEX	1625	1			
		1740	1			
VivaAerobus				MEX	TBD	1
					TBD	1
				MEX	TBD	1
					TBD	1
Volaris	MEX	1339	1			
		1459	1			
		Total Slots Phase One	4	Total Slots Phase Two	4	

SLOT DIVESTITURES (REVISED)

In consideration of United States Department of Transportation (“DOT”) approval of the alliance agreements submitted in Docket DOT-OST-2015-0070, and a grant of antitrust immunity, Delta Air Lines, Inc. and Aerovias de Mexico, S.A. (together, the “Joint Applicants”) commit to transfer to eligible competitors certain landing and takeoff authorizations (“slot-pairs” or “slots”²⁵) at Mexico City’s Benito Juarez International Airport (“MEX”) and New York’s John F. Kennedy International Airport (“JFK”). The Joint Applicants shall transfer the slot-pairs for use in the United States-Mexico air services market subject to terms and conditions specified in the attached Final Order, in this Appendix, and in subsequent notices or orders published in the docket. DOT’s notices or orders will determine the eligibility of competitors to receive the slot-pairs and make selections for the Joint Applicants to follow. Each eligible competitor receiving slot-pairs (“Selected Carrier”) shall comply with the terms and conditions applicable to the request, receipt, use, and subsequent transfer of the slot-pairs.

1. Number of Slot-pairs

- a. MEX** - The Joint Applicants shall make available to eligible competitors twenty-four (24) slot-pairs for year-round use at MEX in two phases:
 - i. Phase 1** - Fourteen (14) slot-pairs shall be transferred as soon as practicable in time for use in the International Air Transport Association (“IATA”) Northern Summer 2017 season;
 - ii. Phase 2** - Ten (10) slot-pairs shall be transferred in time for use in the IATA Northern Summer 2018 season and shall be subject to the exhaustion of efforts requirements in Section 2.h.
- b. JFK** – The Joint Applicants shall make available to eligible competitors four (4) slot-pairs for year-round use at JFK in two phases:
 - i. Phase 1** - Two (2) slot-pairs shall be transferred as soon as practicable in time for use in the IATA Northern Summer 2017 season;
 - ii. Phase 2** - Two (2) slot-pairs shall be transferred in time for use in the IATA Northern Summer 2018 season and shall be subject to the exhaustion of efforts requirements in Section 2.h.

2. Terms and Conditions

- a. Slot Transfer Agreements** – The Joint Applicants shall meet the terms and conditions of the slot divestiture, and arrange for the transfer of the slot-pairs, by entering into a Slot Transfer Agreement with each Selected Carrier. The Joint Applicants shall meet deadlines, and submit slot transfer agreements to DOT for prior approval, as follows:

²⁵ A “slot-pair,” consisting of two slots, enables one round-trip operation at slot-controlled airports. One slot is used for landing and the other for takeoff.

- i. **Deadlines** – The Joint Applicants shall conclude slot transfer agreements with each Selected Carrier by deadlines established by DOT in notices or orders published in the docket. DOT may also establish deadlines in notices or orders by which Selected Carriers must demonstrate that they have exhausted efforts to obtain slots as provided under Section 2.h.
 - ii. **Prior Approval** – Prior to execution, each slot transfer agreement shall be submitted to DOT for prior approval.
- b. **Transborder Service** –MEX slot-pairs shall be used by Selected Carriers to provide nonstop service between MEX and U.S. airports, consistent with proposals made to DOT during the selection process. JFK slot-pairs shall be used by Selected Carriers to provide nonstop service between JFK and Mexican airports, consistent with proposals made to DOT during the selection process.
- c. **Free and Permanent Transfer** – The slot-pairs shall be transferred to Selected Carriers permanently, irrevocably, and free of charge (without cash or non-cash consideration).
- d. **Compliance with Usage Rules, Regulations, and Operational Requirements** – The Joint Applicants shall transfer slot-pairs that meet usage rules, regulations, and operational requirements imposed by slot administrators at MEX and JFK, respectively, such that the slot-pairs are not subject to withdrawal during or after the end of the scheduling season by virtue of any actions or omissions of the Joint Applicants. Selected Carriers shall comply with the same usage rules, regulations, and additional requirements on an ongoing basis for the duration of the terms and conditions as set forth in Section 5.
- e. **Historical Priority** – The Joint Applicants shall transfer slot-pairs which, based upon local rules, are eligible for historical priority such that Selected Carriers may be expected to obtain such historical priority in the following corresponding seasons. For the duration of the terms and conditions of the slot divestiture, as set forth in Section 5, the Selected Carriers shall maintain historical priority for remedy slot-pairs.
 - i. **Ability to Improve Times** - Once the slot-pairs have been transferred by the Joint Applicants, no prior approval from DOT is necessary if Selected Carriers wish to work with the slot administrator or other operators at the airports to improve the timing of the slot-pairs to meet commercial needs.
- f. **Preferred Times** –DOT may require eligible competitors to include preferred times in their requests for remedy slots. Subject to the hourly limits in Section 2.g., DOT may direct the Joint Applicants to transfer slots at or near the times requested by the eligible competitors. To facilitate the transfer process and fulfillment of the goals of the remedy, the Joint Applicants shall make reasonable efforts to identify and transfer slots that meet, as closely as possible, the timing requests of the Selected Carriers. DOT may require the Joint Applicants to meet

the timing requests for each slot in a slot-pair within a sixty (60) minute window, subject to the hourly limits in Section 2.g. If the Joint Applicants do not have slots within the +/- sixty (60) minute window, DOT may require the Joint Applicants to offer to transfer the slots closest in time to the Selected Carriers' requests. The arrival and departure slot times shall allow for reasonable aircraft rotation taking into account standard industry practice for international flights, terminal requirements, and the Selected Carrier's business model, including aircraft utilization requirements.

- g. Hourly Limits** – For both Phase 1 and Phase 2 slots, the Joint Applicants shall use reasonable efforts to accommodate the timing requests of the Selected Carriers during hours declared as saturated or slot controlled by the airport authorities.

 - i. MEX** – At MEX, the Joint Applicants shall not be obligated to transfer more than six (6) slots per hour during hours that the airport authority has declared as saturated, provided, however, that the Joint Applicants may designate two (2) non-consecutive hours during the saturated period in which they will not be obligated to transfer more than four (4) slots per hour, in order to minimize disruptions to the Joint Applicants' banking of flights.
 - ii. JFK** – At JFK, the Joint Applicants shall not be obligated to transfer more than 2 slots per hour. During the 15:00-20:59 period, the Joint Applicants shall not be obligated to transfer more than 2 slots total.
- h. Exhaustion of Efforts to Obtain Slots** – The Phase 2 slot-pairs for both MEX and JFK are subject to the obligation of Selected Carriers to exhaust reasonable efforts to obtain slots from the slot administrators of the airports prior to making a request of the Joint Applicants. Selected Carriers shall apply to the slot administrators with specific timing requests. The requests shall, to the maximum extent possible, comply with local rules and shall be submitted on a timely basis, provided that the Selected Carriers receive notice of pertinent deadlines in advance. Selected Carriers shall be deemed to have exhausted all reasonable efforts, and the Joint Applicants shall be liable to divest the requisite amount of Phase 2 slots to satisfy the selections made by DOT, where: (1) the Selected Carrier submits evidence to DOT that it requested slot-pairs in writing on a timely basis and received no response or an incomplete response, or (2) the Selected Carrier submits evidence to DOT that it requested slot-pairs in writing on a timely basis and did not receive the slots it requested within a sixty (60) minute window (+/- 60 minutes from the request). Selected Carriers have until the deadlines provided in Section 2.a.i. to demonstrate that they exhausted all reasonable efforts. Pending the outcome of the exhaustion of efforts requirement, the Joint Applicants shall identify appropriate Phase 2 slots for potential timely transfer to

Selected Carriers. DOT's written notice to the Joint Applicants that DOT has accepted a Selected Carrier's demonstration of exhaustion of efforts shall constitute a final decision that requires the Joint Applicants to transfer the requisite number of Phase 2 slots necessary to satisfy the selections made by DOT, subject to the terms and conditions of the slot divestiture.

- i. Access to Facilities and Services** – Selected Carriers intending to serve JFK and/or MEX using remedy slots shall use reasonable efforts to obtain access to facilities and services which are normally provided by the airport authorities at MEX and JFK and which are necessary to sustain the air service. Such facilities and services include, but are not limited to, gates, terminal space, ticket and boarding areas, and, if needed, permission and parking to Remain Over Night/ RON. Reasonable efforts require Selected Carriers, at a minimum, to work with the airport authorities to identify available space and accommodation and, if necessary, to avail themselves of forced accommodation provisions in applicable use and lease agreements at the relevant airport. If a Selected Carrier demonstrates to DOT that it has exhausted all reasonable efforts, but has not been able to obtain the access it requires at a minimum to introduce service with the remedy slots, the Joint Applicants shall be responsible for accommodating the Selected Carrier to the extent necessary to allow the services to operate in a commercially viable fashion. Nothing in this subsection shall be construed to require the Joint Applicants or any airport authority to provide access to facilities or services at rates below market levels or below charges established by accommodation provisions in existing airport use and lease agreements.
- j. Non-Interference** – The Joint Applicants shall not take any action that could in any way impede Selected Carriers from obtaining permits or authorizations, or interfere with eligible competitors' operations.
- k. Necessary Approvals and Authorizations** – Selected Carriers shall make reasonable efforts to obtain the necessary safety and economic authority from the Governments of the United States and Mexico to launch the new transborder services in a timely manner. Selected Carriers shall notify DOT if they face unreasonable delays.
- l. Duty to Provide Information to DOT** – The Joint Applicants shall respond promptly to information requests by the Department to facilitate the transfer of slot-pairs. Such requests may include, but shall not be limited to, the amount of slots held at MEX or JFK in total and/or by hour, any specific information corresponding to slots such as number or assigned times, and recorded usage of specific slots.

3. Eligibility and Selections

The Joint Applicants shall transfer slot-pairs consistent with the selections made by DOT by order(s) in the docket. DOT may select among competitors it deems eligible through notices or orders published in the docket, subject to the subsequent transfer and reassignment provisions in Section 4, below.

a. Requests – DOT may publish notices or orders in the docket to request proposals to obtain the slot-pairs made available by the slot divestiture. In such notices or orders, DOT may request that eligible competitors provide the key terms of their requests, including the requested timings, the number of frequencies, the routes intended to be served, proposed start date and schedule, and the aircraft intended to be operated, as well as a business and operational plan, including pricing structure, service offerings, and transborder network plan.

b. Selections – DOT may establish a ranking of the requests and propose the Selected Carriers, including primary and backup recipients.

4. Subsequent Transfers and Reassignment

Selected Carriers shall seek prior approval from DOT to transfer to third party airlines any slot-pairs obtained from the Joint Applicants as part of the slot divestiture. Any such subsequent transfers shall not include cash or non-cash consideration for the duration of the terms and conditions set forth in Section 5.

5. Duration

Although the Joint Applicants' transfer of slots to Selected Carriers is permanent, as required by Section 2.c., the terms and conditions of the slot divestiture apply to the Joint Applicants and Selected Carriers for a period of five (5) years from the date on which the Joint Applicants' antitrust immunity becomes effective. The terms and conditions apply for an initial five-year period from the date on which the Phase 1 slot-pair transfers are completed and the antitrust immunity becomes effective under the terms of a Final Order, and not beyond that initial period should the Joint Applicants re-apply for, and obtain, a further grant antitrust immunity.