



Policy Rule

Joint Operations

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Airport Coordination Netherlands (ACNL) is an independent governing body by public law. The Dutch “Wet Luchtvaart” (Law on Aviation) designates ACNL as the coordinator for slot coordinated airports in the Netherlands. ACNL is responsible for slot allocation and slot monitoring at Amsterdam Airport Schiphol (AMS), Rotterdam The Hague Airport (RTM) and Eindhoven Airport (EIN). In order to make optimal use of the airport capacity our mission is to deliver slot coordination and monitoring services in a neutral, non-discriminatory and transparent way.

ACNL is publishing following policy rule according to article 1:3 (4) in conjunction with article 4:81 of the Dutch “Algemene wet bestuursrecht” (General Administrative Law Act). The abbreviation in Dutch is ‘Awb’.

Content

Introduction 3

Relevant legislation 3

Policy with respect to Joint Operations 4

Process 4

Annex 5

Introduction

1. Occasionally ACNL is requested to confirm that an operation shared by two or more air carriers is a “joint operation” for the purposes of the EU Slot Regulation (hereinafter: the Regulation), and therefore the use of the slots by another air carrier than the slot holder is a valid “use” according to the Regulation.
2. With this policy rule ACNL clarifies its interpretation of the term "joint operations" in the Regulation.

Relevant legislation

3. Article 2.f.ii defines a “group of air carriers” to mean “two or more air carriers which together perform joint operations, franchise operations or code sharing for the purpose of operating a specific air service”. In this definition, a distinction is made between joint operations and franchise operation or a code share operation.
4. Recital 10 of Regulation 793/2004, amending the Regulation, states that the situation of grandfather rights in the case of joint operations, code-share or franchise agreements should be clarified.
5. These clarifications are included in Article 10.8 of the Regulation :

"In the case of services operated by a group of air carriers, only one of the participating air carriers can apply for the required slots. The air carrier operating such a service assumes responsibility for meeting the operating criteria required to maintain historical precedence referred to in Article 8(2).

Slots allocated to one air carrier may be used by (an)other air carrier(s) participating in a joint operation, provided that the designator code of the air carrier to whom the slots are allocated remains on the shared flight for coordination and monitoring purposes. Upon discontinuation of such operations, the slots so used will remain with the air carrier to whom they were initially allocated. Air carriers involved in shared operations shall advise coordinators of the detail of such operations prior to the beginning of such operations."

6. Article 10.8 contains two parts. The first part is applicable to joint operations, code-share and franchise agreements and regulates who can apply for slots and who is responsible for maintaining historical precedence. The second part is only applicable to joint operations and regulates that:
 - a. slots may be used in case of a joint operation by another air carrier;
 - b. the designator code remains on the shared flight;
 - c. upon discontinuation of joint operations the slots will remain with the air carrier to whom they were initially allocated;
 - d. air carriers involved in shared operations shall advise slot coordinators of details of joint operations prior to the beginning of such operations.

7. As the Regulation does not define the term “joint operation”, found in the second part of Article 10.8, the Regulation needs to be interpreted in the light of its principles. One of the apparent intentions of the Regulation is that slots should be used by the air carrier to which they have been allocated and not by another air carrier. If the air carrier cannot use them, they fall back into the pool and are allocated according to objective priority criteria to (other) air carriers. Slot trading or slot leasing directly between air carriers is not allowed. The legislator has chosen to limit the possibilities for slot mobility in the Regulation.

Policy with respect to Joint Operations

8. Article 10.8 of the EU Slot Regulation says that air carriers involved in joint operations must advise the coordinator of the detail of such operations. When looking at such details which air carriers provide to ACNL to see whether a proposal qualifies as a joint operation, ACNL looks at each case on its merits. ACNL considers that for two or more air carriers to have a valid Joint Operation they must have a substantive shared commercial interest in the flights or joint operating responsibility.
9. In doing so ACNL looks at various factors:
 - a. Will both air carriers share responsibility for the practical operation of the flight?
 - b. Will both air carriers have a substantial commercial interest in the financial success of the flights operated using these particular slots?
 - c. How will the commercial interest (profit as well as risk of loss) be shared between the air carriers? Will it be shared profits, shared revenues, shared revenues after deduction of some costs? Is paid separately for the use of the slots?
 - d. Who will supply the aircraft, the cockpit crew, and the cabin crew?
 - e. Will one air carrier take a substantial risk on flights where another air carrier provides aircraft and crew – for example by block booking, and paying for, a substantial proportion of the seats?

Process

10. This policy rule will be effective as of summer season 2022.
11. It is possible to consult ACNL in advance whether, for an intended joint operation, air carriers may be allowed to operate slots of which another air carrier is the slot holder.
12. Send your application of a joint operation to info@slotcoordination.nl. It is possible to apply for more than one season, reducing administrative tasks. Applicants will be informed about the assessment as soon as possible.
13. Notifications of joint operations for the winter season 2021 are not valid for the summer season 2022 and beyond.

Annex

In this annex indicative examples of ways of cooperation in relation to joint operations are provided. These indications don't bind ACNL in any way. The decision about the validity of an application for joint operations will be based on the articles in this policy rule.

Examples

- Free sale agreement, general sales agreement, interlining and a royalty agreement in general do not qualify for a valid joint operation.
- Dry lease and wet lease are regarded as sourcing of production means and no application for a joint operation needs to be made for this.
- Alliances, joint ventures and pooling agreements are regarded as umbrella agreements. The validity of a joint operation is assessed on the basis of the specific agreements within it.
- Code sharing is possible without an airline using slots of another airline. Code sharing does therefore not qualify for a valid joint operation in advance. If the codeshare were to be supplemented with an agreement on a joint operation in which each of the air carriers substantially shares in operating flights, the costs, revenues and/or risks of the joint operation, this might be possible.
Forms of codeshare agreements are amongst others block space and free flow. Block space agreements might qualify if the number of blocked seats are a substantial part of the total number of seats and unsold seats cannot be returned to the operating airline. Soft block space agreements, in which unsold blocked seats can be returned to the operating airline, and free flow agreements in general do not qualify; they can only qualify if part of the agreement is that eventual losses/risks of the flights are shared between the partners, where each partner takes a substantial share.
- A franchise agreement in which the franchisee operates flights entirely under the franchisor's brand name and for this purpose also obtains resources such as branding, uniforms, catering from the franchisor and makes full use of the franchisor's sales organization and distribution channels for the sale of tickets may possibly qualify for a joint operation.
- The validity of a joint operation in a revenue and/or profit sharing agreement will be assessed on a case-by-case basis on the basis of the test questions under recital 9.