

**EXPERIENCE WITH SLOT TRADING  
IN THE UK**

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## **THE EXISTING LAW - REG 95/93**

**Prior to amendment on 1 July 2004**

**“Slots may be freely exchanged between air carriers ...”**

**After amendment on 1 July 2004**

**“Slots may be .... exchanged, one for one, between air carriers”**

**In each case**

- **subject to confirmation of operational feasibility by the coordinator**
- **subject to limitations in the case of new entrant slots**

**Amendment also clarified (somewhat) provisions on transfer in case of takeover**

**R v AIRPORT COORDINATION LTD ex p STATES  
OF GUERNSEY TRANSPORT BOARD**

**Air UK gave up Heathrow-Guernsey service end 1997**

**Air UK exchanged with BA its 4 pairs of slots (summer season)**

**Air UK was then allocated 4 pairs of slots (winter season) and also exchanged them with BA**

**The Board brought an action for judicial review against Airport Coordination Ltd (ACL) for having allocated the winter slots and having permitted the exchanges**

**BA, Air UK and IATA jointed in an interested parties**

## **SLOT EXCHANGES**

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### **Article 8.4 of the Regulation:**

**“Slots may be freely exchanged between air carriers or transferred by an air carrier from one route, or type of service, to another, by mutual agreement or as a result of a total or partial takeover or unilaterally”**

### **The Board argued:**

- the exchanges were not true exchanges but disguised transfers**
- the Regulation should be interpreted purposively**
- ACL had a duty to enquire as to the nature of the exchange**
- ACL should not have confirmed the exchanges**
- recitals and Commission views support this**

## **SLOT EXCHANGES**

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**The airlines argued:**

- **the Regulation was clear, and implications should not be read into it**
- **a duty of “due diligence” by the coordinator would be totally impracticable**

**The judge held:**

- **the words “freely exchanged” mean what they say**
- **no legal basis for purposive approach when meaning clear**
- **recitals unhelpful**
- **Commission views irrelevant**
- **making the coordinator a kind of regulatory body would be unworkable and undesirable**

## **SALE OF SLOTS**

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**No evidence that the exchanges accompanied money but “highly probable”**

**“In my judgment, where slots are exchanged, the fact that there is an accompanying money payment by the acquirer of what are perceived to be the more valuable slots does not convert the exchange into a sale and does not make the transaction out of the scope of an exchange”**

## **TRANSFER OF SLOTS**

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**ACL argued that even inter-airline transfers were permitted**

**Judge made no decision on this, because not necessary**

**“A drafting curiosity, bearing the hallmark of the old joke about the definition of a camel”**

## **GRANDFATHER RIGHTS**

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### **Article 8.1(a) of the Regulation**

**“a slot that has been operated by an air carrier as cleared by the coordinator shall entitle that air carrier to claim the same slot in the next equivalent scheduling period”**

### **The Board argued:**

- **ACL should not have allocated the winter slots to Air UK because it knew it was not going to use them**
- **ACL had an implied duty to satisfy itself as to Air UK’s intended use**

## **GRANDFATHER RIGHTS**

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The judge held

- the wording was clear
- Imposing such a duty would severely undermine the security and administration of historic slots

**POINTS ARISING FROM EXPERIENCE WITH UK  
TRANSACTIONS**

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**Any transaction presented as an “exchange” should be acceptable – even if junk slots are involved**

**Coordinators are not, and do not need to be, concerned whether money changes hands**

**Slots may thus effectively be sold**

**They may also be “leased” or “baby-sat” provided there is an exchange at the beginning and end of the period**

## **POINTS ARISING FROM EXPERIENCE WITH UK TRANSACTIONS (2)**

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**The risks which the “buyer” takes are:**

- **the possibility of a challenge by an interested party (less likely after the Guernsey case)**
- **the possibility of a change in the law**

**Separate exchanges of the summer and winter slots need to take place**

- **It is only possible to exchange slots grandfather rights in which have been confirmed and not yet used**
- **Risk for buyer until second exchange has taken place**

**Financial aspects**

- **VAT treatment**
- **Balance sheet treatment**

**POSSIBLE AMENDMENT – POINTS FOR CONSIDERATION**

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**Express right of transfer (for consideration) in addition to exchange?**

**When can slots be transferred? – when grandfather rights confirmed, and not yet used?**

**Recognition that consideration may accompany exchanges?**

**Clarification of takeover wording (if necessary)**

**Coordinators should not be given extended regulatory role**

**Consequences for balance sheet purposes**

**Competition consequences**