



U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of Airport Planning
and Programming

800 Independence Ave., SW.
Washington, DC 20591

JUL 26 2016

Mr. Brian P. Cobb
Director, Customer Services
Competition Plan Coordinator
Kenton County Airport Board
P.O. Box 752000
Cincinnati, OH 45275-2000

Dear Mr. Cobb:

Thank you for submitting the Kenton County Airport Board (Board) Fiscal Year (FY) 2016 Competition Plan Update for Cincinnati/Northern Kentucky International Airport (CVG). The Federal Aviation Administration (FAA) has reviewed your Plan Update and finds it in accordance with the requirements of Section 155 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21), Pub. L. No.106-181, (April 5, 2000), codified as Title 49 U.S.C. Sections 40117(k) and 47106(f).

This 2016 Plan Update is required because, based on calendar year 2014, two air carriers accounted for over 50 percent of enplanements, and the Board has entered into a new Airport Use Agreement with signatory airlines at CVG (Agreement) effective January 1, 2016, for a five-year term. As explained below, execution of future use and lease agreements will require the filing of a Competition Plan Update.

We note that the Board has included the following new pro-competitive policies and practices in your 2016 CVG Plan Update and Agreement:

- Identifying that the Board now has much greater control over capital projects, including;
 - Establishing a negative Majority in Interest (MII) process whereby signatories are required to issue written disapproval for capital expenditures requiring MII consideration within 60 days or the capital expenditure requiring MII consideration is deemed approved. This is in contrast to the prior Agreement which required affirmative approval for all capital expenditures over \$50,000.
 - Defining that the MII process does not apply to capital projects having an individual net capital cost of less than \$750,000, where:
 1. the debt service and/or amortization charges will not be included in calculating a signatory's rentals, fees and charges,

2. necessary to assure or facilitate compliance with a rule, regulation, or order of a governmental agency with jurisdiction over the operation of the airport;
 3. required to address legal or regulatory compliance (including safety and security purposes),
 4. required for environmental remediation,
 5. necessary to repair casualty damage,
 6. necessary to settle claims or satisfy a judgment or
 7. an expenditure of an emergency nature.
- Identifying that no clause exists in the new Agreement that could be viewed as restricting the Board's ability to offer discount fees during promotional periods;
 - Providing funds that can be used for any lawful airport purpose, thereby providing the Board with greater latitude in the development of an airline incentive program;
 - Identifying that all gates are leased on a preferential use basis or available for common use;
 - Noting that the Board has specific oversight over the subleasing of each gate at CVG;
 - Clarifying that the Board has transitioned to software that tracks each air carrier's gate utilization for every leased gate at CVG;
 - Noting that the Board now has specific oversight over any gate fees or related support fees for each leased gate at CVG (to ensure fees are fair and reasonable to a new or expanding air carrier); and
 - Identifying specific procedures for the assignment of each gate at CVG on either a preferential or common use basis.

As noted above, your Plan Update was approved. However, we ask that the Board consider the two follow-up actions noted below.

First, we note Article 7, Section 7.3, Capital Expenditures Not Subject To MII, of your Agreement provides that certain capital expenditures shall not require MII consideration. Section C identifies the following capital expenditure not subject to the MII.

"Any Capital Expenditure necessary to assure or facilitate compliance with a rule, regulation, or order of any Federal, Commonwealth or other governmental agency that has jurisdiction over the operation of the Airport..."

Although we don't disagree with that basic principle, we are concerned that the language may be written so broadly that it could be misconstrued by Airlines to mean that the MII provisions do apply to PFC-financed facilities at CVG (because it does not specifically state that facilities financed with PFCs are not subject to MII approval). Therefore, we ask that you consider clarifying this language when you negotiate a new

Agreement.¹ The PFC statute directs that an airport-airline contract may not impair [your] authority to impose a [PFC] or to use the [PFC] revenue as provided in 49 U.S.C. § 40117(f)(1). These changes should specify that the MII is not applicable to any portion of a project financed with PFC revenues.

Second, we recommend that, in addition to posting your 2016 Plan Update on your website, you also post this letter on your website.

Please provide us with a letter outlining your plans to consider these actions within 30 days of the receipt of this letter.

As you are aware, the Board has now filed, and the FAA has approved an initial Competition Plan and six Plan Updates; thus, no further Competition Plan Updates will be required unless certain special conditions arise. The conditions identified in the Airport Improvement Program (AIP) Handbook, Order 5100.38D, Appendix X, which would require the filing of a Competition Plan Update are as follows:

- An airport files a competitive access report as required by Section 424 of Vision 100, codified at 49 U.S.C. Section 47107(s) stating it had denied access to an air carrier for gates or facilities within the last six months. Section 424 requires any medium hub or large airport that has denied a carrier's request or requests for access to file a report with the FAA describing the carrier's requests, providing an explanation as to why the requests could not be accommodated, and providing a time frame within which, if any, the airport will be able to accommodate the requests.
- An airport executed a new lease and use agreement, or significantly amended a lease and use agreement, including an amendment due to use of PFC financing for gates.

Please note that this letter does not constitute the FAA's approval of the Agreement or any specific provisions thereof, which remain subject to all applicable Federal law and regulations.

Please also note that, under Section 134 of the FAA Modernization and Reform Act of 2012, Pub. L. No. 112-95 (Feb. 14, 2012), Congress eliminated the need for airports to include data on airfare levels and patterns of air service in Competition Plans. Thus, we will no longer require this information in any further updates to the CVG Competition Plan.

As you may know, the Secretary of Transportation is required by 49 U.S.C. § 40117(k) to review implementation of Competition Plans from time to time to verify each covered airport implements its Plan successfully. In connection with our review, we may

¹ FAA/OST best practices have found MII restrictions can adversely impact competition at airports by limiting the ability of the airport to expand facilities to meet demand from new entrants or expanding incumbent carriers.

determine that it would be useful to visit your airport or hold a teleconference with airport officials. Please be assured that we will notify you should we decide to visit CVG in connection with its Competition Plan.

If you have any questions regarding this letter or the FAA's review of your Plan, please contact Mr. Joe Hebert, Manager, Financial Analysis and Passenger Facility Charge Branch, at (202) 267-8375.

Sincerely,

Original Signed By

Elliott Black
Director, Office of Airport Planning
and Programming

Enclosure

cc: Candace McGraw, Chief Executive Officer, Kenton County Airport Board
Pearlis Johnson, Acting Manager, Airports Division, Southern Region
Troy Butler, Manager, Airports Division, Southern Region, Planning and
Programming Branch
Philip Braden, Manager, Memphis Airports District Office