



ICELANDIC COMPETITION AUTHORITY

Thursday, 22 October 2015

Opinion No. 2/2015

Restrictions on competition resulting from the arrangement for allocation of time slots to airlines at Keflavik Airport

Opinion to the Minister of the Interior

With this opinion, the Icelandic Competition Authority (ICA) recommends that the Minister of the Interior facilitate action to reduce restrictions on competition resulting from the arrangement for allocation of time slots to airlines at Keflavik Airport. Concurrently with the opinion, the ICA has issued a separate opinion to the Icelandic Transport Authority.

I

CIRCUMSTANCES OF THE OPINION

The opinion is issued with reference to Article 18 of the Competition Act No. 44/2005, which calls for the ICA to inform the Minister if it is of the opinion that any provisions of law or administrative provisions are contrary to the objectives of the Act or detrimental to free competition in trade. Reference is furthermore made to item c, Paragraph 1 8. of Article 8 of the Competition Act, which states that the ICA shall observe that measures taken by public authorities do not restrict competition and shall indicate to the authorities any means by which competition can be made more effective and the entry of new competitors into the market facilitated.

The ICA has repeatedly discussed the effects of the current arrangement for allocation of time slots to airlines at Keflavik Airport. The first recommendation to aviation authorities was contained in the ICA's report no. 2/2008, *Vigorous development – the opening of markets and strengthening of economic activities*. In past years, the ICA has also reviewed complaints from Iceland Express ehf. and, subsequently, WOW Air ehf. (hereinafter referred to as WOW Air), whose March 2013 complaint led to Decision No. 25/2013, *Complaint of Wow Air ehf. (airline) regarding allocation of slots at Keflavik Airport*. Said decision contained instructions to ISAVIA (the Icelandic Aviation Oceanic Area Control Centre).

The Competition Appeals Committee reversed the decision with its rulings in cases nos. 10 and 11/2013. The committee believed that the matter should be addressed to the slot coordinator rather than ISAVIA. WOW Air appealed the case to the District Court of Reykjavík. During court proceedings, an advisory opinion was sought from the EFTA Court, which subsequently agreed to an accelerated procedure and passed its judgement in December

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2014. The judgement contains important guidance on the authorisations of public authorities, including competition authorities, regarding allocation of time slots. The case was eventually dismissed by the District Court and the conclusion confirmed by the Supreme Court.

In April 2014, concurrently with the adjudication of the aforementioned older case, WOW Air submitted a new complaint to the ICA regarding allocation of slots for summer 2015. The ICA decided to address the complaint. The consequent investigation, along with the above-mentioned observations and resolutions, forms the basis of the present opinion.

II CONCLUSION

This conclusion summarises the main conclusions of the aforementioned investigation. In the ICA's opinion to the Icelandic Transport Authority No. 1/2015, published simultaneously with the present opinion to the Minister of the Interior, contains a detailed discussion of legal proceedings and the views of stakeholders, along with arguments for the ICA's conclusions. Opinion No. 1/2015 will hereafter be referred to as applicable.

1. Competition is important, including for passenger transport and tourism

It is recognised that competition in business is important, as it increases the welfare of consumers and contributes to efficiency in economic activity. Thus, healthy competition is conducive to consumers getting more and better goods and services for the lowest prices. The discipline imposed by competition also pushes businesses toward rationalising their operations and works against waste. Finally, competition boosts innovation and progress in business operations and is conducive to macro-economic advantageousness in the national economy.

These advantages of competition are apparent in regular scheduled flights to and from Iceland. Experience has shown that increased competition in flights to and from the country reduces prices and increases the frequency of flights, thus improving customer service. The price of air fares from Keflavik Airport to Copenhagen and London, for example, was reduced by up to 30–40% with the entry of Iceland Express into those markets in 2003. With the entry of Iceland Express into the markets for flights to and from Keflavik Airport and Boston and New York in 2010, prices were reduced by up to half. Independent price surveys have shown that price competition has increased with the entry of WOW Air into the market. These price reductions result in great savings for the general public and businesses in Iceland. Lower prices and increased frequency of flights also lead to a significant increase in tourism, which has already become one of the country's biggest industries.

Naturally, international air travel is of vital importance to Icelandic society. With regard to the aforementioned, any restrictions on competition in air travel to and from Iceland are likely to cause great harm to consumers and industries. Therefore it is particularly important for authorities to look out for the public interest in this important area of business.



On 1 September 2015, the OECD issued a report on the Icelandic economy (OECD Economic Surveys ICELAND). The report places great importance on competition and emphasises its importance in increasing productivity and industrial innovation. Companies that are already dominant do not generally benefit from increased competition, however, so they have an incentive to prevent the entry of new competitors.

The report encourages Icelandic authorities to improve their efforts to promote competition and support the measures of the ICA, as there is a lack of competition in a number of markets (such as financial, transport, telecoms and the sales of foodproducts). One example named is the fact that WOW Air could not obtain slots at Keflavik Airport to allow it to take better advantage of international connecting flights. This was delayed despite the fact that the slot allocation mechanism was recognised by competition authorities as detrimental to competition as early as 2008.

2. Keflavik Airport holds a very unique position

Keflavik Airport is in the unique position of being the only airport for regular scheduled flights to and from Iceland, apart from the scheduled flights to the Faroe Islands and Greenland from Reykjavik Airport. Keflavik Airport is thus the only realistic gateway to and from Iceland. In this regard, the airport holds a highly unique position compared to most other airports and transport centres around the world, as most other countries base international travel on a diverse network of vehicle, train, shipping and air transport.

The EFTA Court referred specifically to this unique position of Keflavik Airport in its review of the Reykjavik District Court's request for an advisory opinion, referred to in Section I above. Among the reasonings for the EFTA Court agreeing to apply an accelerated procedure was the importance of time slot allocation and the significant objective of the EEA Agreement to ensure fair and robust competition for the benefit of consumers and competitors. The court noted that Iceland's unique geographical position must be taken into account, as well as the fact that Keflavik Airport is the country's sole international airport.

Considering the above, it is of particular importance for there to be as much access as possible for those who wish to operate scheduled flights to and from Iceland, thus increasing competition. The ICA believes the efficiency and supply of time slots to be highly significant in that regard.

3. The market for scheduled flights is sensitive as regards competition

The predecessors of Icelandair enjoyed considerable privileges, holding nearly all exclusive licenses for both international and domestic flights, thus holding a monopoly on various routes. For decades, they also had an exclusive agreement with Icelandic authorities for ground handling services at Keflavik Airport. The Icelandair group could therefore build up its extensive operations protected by the authorities. With the adoption of the EEA Agreement, however, competition in aircraft operation and related activities became the established rule. The following cases reflect the status of competition in the aviation market:



- The Decision of the ICA No. 22/2003 found that Icelandair had abused its market-dominant position with actions to prevent Iceland Express from gaining foothold on the aviation market. The ICA believed that Icelandair enjoyed a dominant position. Reference was made to Icelandair's large market share and the strength resulting from its route system in regular scheduled flights between North America and Europe. It was furthermore pointed out that although official entry barriers in flight operations had for the most part been abolished, experience both domestically and abroad had shown that there were great economic entry barriers to the aviation market. In that regard, mention was made of competitors who had attempted to establish themselves but had abandoned the market, except for foreign airlines who offered chartered flights in the summertime. The ruling of the Competition Appeals Committee in cases nos. 17-18/2003 confirmed the conclusion that Icelandair had a market-dominant position and had abused that position. Icelandair's argument that there were few entry barriers to the market was not accepted.
- The ICA Decision No. 11/2007 again found that Icelandair had a market-dominant position and had abused its position with actions to prevent Iceland Express from gaining foothold on the aviation market. Icelandair emphasised to the ICA that there were minimal entry barriers to the Icelandic aviation market, referring to the fact that British Airways and SAS Braathens had commenced regular scheduled flights to and from Iceland. The ICA did not agree with this and referred to Icelandair's notification to investors that this increased competition did not have an effect on its market share, only on airlines offering chartered flights.

In the ruling in case no. 4/2007, the ICA's Appeals Committee confirmed the authority's finding that Icelandair had a market-dominant position and had violated Article 11 of the Competition Act, referring, among other things, to the advantage created for Icelandair by the route system and pointing out that its access to transport passengers enables the enterprise *"to ensure operational efficiency and improve its financial position far beyond the capabilities of Iceland Express ehf."* The strength from the operations of Icelandair's affiliated companies was also pointed out. The Appeals Committee pointed out that *"the history of Iceland Express ehf. and other companies who have entered the market"* shows that there are entry barriers to the market.

With the Supreme Court of Iceland's adjudication of 9 February 2012 in case no. 205/2011, the conclusion by the Appeals Committee, that Icelandair had a market-dominant position and had violated Article 11 of the Competition Act, was confirmed.

- In ruling no. 9/2006, the ICA found that Icelandair affiliate Flugþjónustan á Keflavíkflugvelli ehf. (IGS) had a market-dominant position in the ground handling market for passenger flights at Keflavik Airport, cf. Decision No. 9/2006. In this context, reference was made to the market share, over 90%, and Icelandair's strong position in related markets. This conclusion was confirmed by the ruling of the Competition Appeals Committee no. 4/2007. It was furthermore confirmed that IGS had undertaken competitively restrictive actions towards a small competitor, Vallarvinir (Airport Associates). The decision of the Appeals Committee was



confirmed with the Supreme Court's adjudication of 2 October 2008 in case no. 640/2007. A previous verdict found Icelandair's predecessors to have prevented competitors from establishing themselves in the market following the removal of the enterprise's monopoly on ground handling services, cf. the ICA's Decision No. 35/2000 *Vallarvinir ehf.'s complaint regarding competition restrictions by aviation authorities at Keflavik Airport and Leif Eiriksson Air Terminal on the enterprise's operations at Keflavik Airport*, and cf. the ruling by the Competition Appeals Committee in case no. 1/2001 *Leif Eiriksson Air Terminal vs. the ICA*.

- On 27 November 2008, the ICA published report no. 2/2008, *Vigorous development – the opening of markets and strengthening of economic activities*. One of the matters addressed in the report was the importance of increased competition in aviation. In that respect, the report pointed out the great significance of Icelandair's competitors having fair access to important time slots at Keflavik Airport, thus enabling them to establish their own route system to enjoy satisfactory economies of scale and scope. Otherwise, they would probably not be able to compete actively with Icelandair in the long run.
- In the ICA's Decision No. 4/2011, *Iceland Express ehf. and Astraesus Airlines Ltd.'s complaint regarding the Icelandic Civil Aviation Administration's procedures in issuing flight permissions in Iceland to foreign flight operators*, these recommendations were not followed. In that case, the ICA concluded that the Civil Aviation Administration had disrupted competition by setting unjustified requirements that prevented Iceland Express from offering regular scheduled flights from London to Winnipeg, Canada, via Keflavik. The ICA agreed with Iceland Express that the Civil Aviation Administration's actions constituted unnatural protection of interests for Icelandair and other Icelandic flight operators. The Competition Authority cited Icelandair's dominant position and the importance of public entities refraining from actions that disrupt competition to the detriment of the general public.

This matter was raised on account of aviation authorities neglecting to follow the recommendations in the Competition Authority's report no. 2/2008, which included the recommendation to aviation authorities to revise their procedures in issuing licenses to foreign flight operators in order to promote competition.

- The ICA reviewed the merger of WOW Air and Iceland Express in its Decision No. 5/2013. The decision states that the merger was due to Iceland Express's highly difficult position. The ICA gathered detailed information on the aviation market, including data to evaluate size and market share in all scheduled flight routes to and from Keflavik for the years, 2010, 2011 and part of 2012.

The ICA's investigation revealed that although new airlines had commenced operations (e.g. WOW Air, easyJet and Delta Airlines), Icelandair still enjoyed a highly dominant position in regular scheduled flights to and from Iceland. Most important in that respect are Icelandair's very high market share and even monopoly of some of the main scheduled routes to and from the country. Icelandair's route system, which includes connecting flights between destinations in Europe and North



America, also provide the company with a significant market advantage. The decision pointed out the effects of Icelandic aviation authorities giving Icelandair priority to the most important time slots at Keflavik Airport. This priority access put Icelandair in a strong position and made it difficult for smaller competitors to establish their own efficient route system and strengthen their long-term competitive position.

This overview shows that competition in flights to and from the country has long been limited. Considering Iceland's geographical position and the nature of the field, these are obviously highly important markets. It is therefore essential to prevent any entry barriers or other competition restrictions in this area.

4. Icelandair is still dominant

There is nothing to indicate that Icelandair's position, stated above, has changed. The company still enjoys a strong position in regular scheduled flights to and from Iceland. Icelandair has the highest share on the most important flight routes, and there are no competitors for many of them, particularly on North American routes.

In the ICA's decisions, the high market share has been considered the most important factor when evaluating Icelandair's position. Additional factors have supported the evaluation, including financial strength, a strong route system, the operation of affiliated companies in related markets and the operations of Icelandair's Frequent Flier Club, all of which are still present.

Icelandair also has a unique position compared to foreign airlines and their hubs, as Icelandair holds 84–89% of allocated time slots in peak hours at Keflavik Airport and approximately 69% of all allocated time slots at the airport. These are very high ratios compared to other airlines who also enjoy a strong position at their hub airport. These refer to the destinations in Europe and North America most frequently flown to and from Iceland.

In the last few years, more competitors have entered markets for regular scheduled flights to and from Iceland, foreign airlines such as SAS, easyJet, Air Berlin, Vueling, Delta and British Airways. Their operations in Iceland have varied in scale, but most of them have only offered flights part of the year. The fact that foreign airlines undertake flights to the country does not, in and of itself, prove that there are minimal entry barriers to the respective market or that an enterprise that was previously considered dominant in the market has ceased to be so, cf. the Supreme Court of Iceland's adjudication of 9 February 2012 in case no. 205/2011. Documentation in the case and previous rulings show that Icelandair has maintained its dominant position despite foreign airlines commencing operations in Iceland, and experience shows that it has been difficult for new airlines to enter the market for flights to and from Iceland.

It is important to make a distinction in this respect between airlines that fly "from Iceland" and airlines that fly "to Iceland". Airlines that fly "from Iceland" base their schedule on Keflavik Airport being their hub and aircraft generally taking off from there in the morning and/or Keflavik Airport being their hub for connecting flights. WOW Air, and previously



Iceland Express, is in this class of airlines and their demand for time slots in peak hours is high. On the other hand, airlines that fly "to Iceland" are all foreign airlines that operate between destinations abroad and Iceland. Their hub airports or airports for connecting flights are foreign airports, and their flights do not commence in Keflavik. Airlines that fly "from Iceland" are particularly important for Icelandic consumers, as their services are largely tailored to their needs.

It is not contrary to the Competition Act for enterprises to enjoy a strong position, and it is both natural and desirable for an enterprise such as Icelandair to provide good services and robust competition against its competitors. It is, however, essential that public entities do not prevent Icelandair's competitors from having the same opportunities to establish their operations in order to provide active competition.

Icelandair's status and definitions of markets are discussed further in Opinion no. 1/2015, Section III. 4. (Opinion no. 1/2015 is only available in Icelandic.)

5. Time slots in peak hours create a competitive advantage

As stated above, Icelandair is allocated almost all time slots in peak hours at Keflavik Airport. The peak hours in question are between 7:00 and 8:00 in the morning and between 16:00 and 17:30 in the afternoon. Icelandair has based departures in connecting flights between Europe and North America on time slots within these time limits. WOW Air and other competitors of Icelandair maintain that these time slots give Icelandair a competitive advantage and have requested allocations, but without success.

The ICA's investigation has revealed that departures in these time periods are highly important for airlines who wish to establish a route system in regular scheduled flights between Europe and North America, as Keflavik Airport is a connecting airport for passengers. An airline holding these time slots thus has a great competitive advantage. The arguments for this include the following:

- A survey conducted on behalf of the ICA revealed that a large majority of the general public prefers a departure at 7:30 AM rather than 6:30 AM to destinations in Europe. An overwhelming majority also prefers a departure at 7:30 AM to a departure at 1:00 AM to destinations in Europe. The questions assumed that all other criteria remained the same, i.e. price, service and quality of the flight.
- Collective wage agreements with flight crew members can lead to increased costs for airlines if departures are early in the morning.
- Departures between 6:00 AM and 7:00 AM result in passengers having to wake up earlier. Passengers from North America also land at Keflavik Airport at times that are generally more inconvenient.
- Departures to Europe between 8:00 AM and 9:00 AM result in it being more difficult to use the same aircraft for an afternoon flight to Europe on the same day, as many European airports prohibit, or severely limit, air traffic late in the evening and at night-time.
- Departures to North America after 5:30 PM result in significantly fewer options for connecting flights from the relevant airport.



- Data collected from Icelandair reveals a lower passenger load factor in flights departing after midnight than in morning flights as well as lower average fares. Night flights are therefore less cost-effective.

It goes without saying that the above results do not preclude an airline from basing connecting flights on departures outside these peak-hour slots, but the fact of the matter is that an airline with allocated time slots between 7:00 AM and 8:00 AM and between 16:00 PM and 17:30 PM has a competitive advantage towards an airline that competes using time slots outside these time limits.

This is discussed in detail in Opinion no. 1/2015, Section III. 6.

6. Icelandair not only enjoys grandfather rights but is also allocated all new time slots

Keflavik Airport's capacity has been increased significantly in the past few years. When WOW Air entered the market in May 2012, there were 14 gates at the airport. The gates have increased in number since then, and a further increase is expected when construction at the terminal will be completed in 2016. This increased capacity in peak hours, i.e. between 7:00 AM and 8:00 AM and between 16:00 PM and 17:30 PM has in all instances been allocated to Icelandair, despite WOW Air requesting allocation for peak hours.

Future plans for the development of Keflavik Airport and the terminal in the next 25 years entail a further increase of capacity, i.e. an increase of up to 40 gates by 2040, which amounts to approximately double the current capacity.

There are strong indications that this increased capacity is intended to meet the needs of Icelandair rather than smaller competitors. Among these indications is the attitude towards competitive factors apparent in ISAVIA's replies, including ISAVIA's claim that the timing of departures is mainly of concern to Icelandair, due to it establishing its route system over several decades, but is not significant for other operators, as there are plenty of other time slots for them. Furthermore, Icelandair has introduced new destinations and more frequent flights to other destinations, assuming these competitively important time slots before they have been allocated. Public comments by Icelandair Groups's CEO on the importance of expansion plans for the company also support this conclusion.

This is discussed in further detail in Opinion no. 1/2015, Sections III. 5 and III. 7.4.

7. The co-ordinator does not consider competitive factors when allocating new time slots

A co-ordinator is responsible for the allocation of time slots at Keflavik Airport. Council Regulation (EEC) No. 95/93 and Regulation No. 858/2014, on the allocation of time slots at airports, ensure the independence of the co-ordinator in this allocation. The co-ordinator is, however, expected to apply certain criteria to the allocation. Council Regulation (EEC) No. 95/93 and IATA guidelines thus stipulate the priorities to be used when allocating time slots. These include grandfather rights, i.e. the right of an air carrier to keep previously



allocated time slots. The guidelines also assume some priority for new competitors and air carriers planning on year-round operations.

It is undisputed that Icelandair is entitled to peak-hour time slots on the basis of the grandfather rule, provided that Keflavik Airport will continue to be defined by aviation authorities as a co-ordinated airport. It is also clear that the provision for priority of new entrants has not enabled new and smaller competitors to gain priority access to peak-hour slots, mainly because the relevant prerequisites are very narrow.

Apart from the above criteria, the co-ordinator is to consider various factors. It is noted in particular that the co-ordinator is to consider competitive factors and local guidelines. All these criteria are to be applied when new time slots are allocated.

The co-ordinator's replies to the ICA's queries regarding the criteria for allocations and considerations of competitive factors clearly indicate that in the last years, competitive factors were not considered when new time slots were allocated. In the co-ordinator's replies it has, for example, been considered absurd for new or smaller competitors to consider competing operations in these peak hours. The investigation revealed conclusively that Icelandair is given priority when new time slots are allocated at Keflavik Airport, despite the fact that IATA guidelines assume that competition grounds are to be considered during allocation.

The ICA believes that the co-ordinator has a strong duty to demonstrate the objectiveness of his decisions and to follow the guidelines prescribed by the EEC regulation and IATA guidelines.

This is discussed in further detail in Opinion no. 1/2015, Section III. 7, particularly 7.3.2 and 7.4.

8. The airport operator and aviation authorities show no understanding of competitive aspects

ISAVIA has repeatedly disputed the ICA assessment of the competitive importance of time slots in these peak hours, claiming that there are plenty of available time slots at the airport and that WOW Air could ensure more time slots than its competitor if the company wished to establish a route system. If there is a unique competitive position, it is not determined by allocation of time slots, but rather by "establishing a route system over several decades". ISAVIA has furthermore argued that timing is of less importance to low-cost airlines such as WOW Air, regardless of the fact that the company plans to establish a route system of regular scheduled flights to and from Iceland, with Keflavik Airport as its hub, just like Icelandair.

Opinion No. 1/2015 describes the communications between the ICA and the Icelandic Transport Authority regarding investigations carried out by the ICA in the last few years. These communications reveal a highly limited understanding of the competitive barriers that slot allocations at Keflavik Airport entail and which the ICA has pointed out for several years. In fact, the Icelandic Transport Authority has gone so far as to declare that the institution has no knowledge of competition matters.



The ICA finds it astonishing that an institution which plays such an important part in important economic sectors should display such little interest in the public interest issue of active competition in markets for which it is responsible. It is to be noted that the Icelandic Transport Authority acts as a Member State as regards implementation and supervision according to EU regulations on the allocation of time slots at airports. In this context, it is logical to cite the objectives of Regulation No. 858/2014, which include promoting increased competition in the European Economic Area. It is hard to fathom how the Icelandic Transport Authority can work towards this objective if the institution has no expert knowledge of competition matters or is oblivious to competition barriers in a market which it governs and which the ICA has pointed out to it.

There is reason to note, in this context, that the ICA has strived to provide guidance on how the Icelandic Transport Authority can take competition matters into account when dealing with these matters. Guidelines and recommendations regarding time slot allocations have been issued since 2008, but the Icelandic Transport Authority has not seen it fit to take any action in response. Most recently, the Icelandic Transport Authority ignored the ICA's recommendation to perform a competitive evaluation when reviewing Keflavik Airport's designation as a co-ordinated (Level 3) airport.

This is discussed in further detail in Opinion No. 1/2015, Section III. 7.

9. It is important to review the decision to categorise Keflavik Airport as a co-ordinated airport

Icelandic aviation authorities can choose between two major categories for Keflavik Airport: as a co-ordinated airport (Level 3 Airport), as it is now, or as a Schedules Facilitated Airport (Level 2). For Level 3 Airports, the criteria for slot allocation detailed in Section 5 above apply, i.e. airlines keep the time slots that they have once been allocated on the basis of the grandfather rule.

Aviation authorities in each state decide how an airport should be categorised. The ICA is of the opinion that the definition of a Level 2 Airport is no less applicable to conditions at Keflavik Airport. A Level 2 Airport is defined as one where "*there is potential for congestion during some periods of the day, week or season, which can be resolved by schedule adjustments mutually agreed between the airlines and where a facilitator has been appointed to facilitate aviation activities.*" Many European airports categorised as a Level 2 Airport are as large or larger than Keflavik Airport, while the largest airports, which carry many times the number of passengers at Keflavik Airport, are usually Level 3. Keflavik Airport's designation as a Level 3 Airport is therefore not automatic.

The ICA has repeatedly recommended to aviation authorities that Keflavik Airport's designation be reviewed and that competitive factors be considered as part of that review. A recommendation to that effect was first issued in 2008. In a 2014 recommendation to the Icelandic Transport Authority, the ICA recommended that such a review would include a separate assessment of the competitive effects of the current arrangement. The Icelandic Transport Authority received guidelines on how to carry out said assessment, cf. also ICA opinion no. 2/2009, *Competition evaluation by public authorities.*



However, in the Icelandic Transport Authority's recent review of the designation, these recommendations and guidelines were ignored and the current designation was upheld, along with the grandfather rights and the ensuing competitive barriers, without a competition evaluation of the kind suggested by the ICA being carried out. Furthermore, the designation was indefinite rather than being valid for a specific period like before.

With reference to the above, the ICA has again recommended to the Icelandic Transport Authority that Keflavik Airport's designation be reviewed. This is done by means of Opinion No. 1/2015, cf. Sections III. 8 and IV.

10. The authorities should take the initiative to issue guidelines for time slot allocations

If a review of the designation would still result in the airport being categorised as a Level 3 Airport, an alternative way to combat the competitive barriers of the current arrangement would be for aviation authorities to make efforts to issue guidelines on the basis of EEC Regulation No. 95/93 on the allocation of time slots. Such guidelines would also be in accordance with the objectives of the recent Regulation No. 858/2014. These guidelines would stipulate that the co-ordinator should take due account of competitive factors in the allocation of available slots. It is to be noted, however, that the guidelines or their contents could presumably just as easily apply if the airport were a Level 2 Airport where a facilitator handles allocations.

In the course of the investigation, the slot co-ordinator, the Iceland Transport Authority and the Minister of the Interior have presented various arguments against issuing such guidelines, claiming that they are unprecedented and would entail discrimination and threaten the independence of the co-ordinator. Both the Icelandic Transport Authority and the Ministry of the Interior have declared that these entities are not authorised to issue or initiate local guidelines.

The ICA is of the opinion that the applicable law, its interpretation and implementation permit guidelines for taking competitive factors into account in the allocation of time slots, provided that such guidelines contain no provisions contrary to EEC Regulation No. 95/93, i.e. provisions that curtail the independence of the co-ordinator or discriminate against parties in an unfair manner.

Such guidelines would accord with the objectives of EEC Regulation No. 95/93 and the Ministry of the Interior's new Regulation No. 858/2014, on the allocation of time slots. According to Article 1 of the latter regulation, its objectives include promoting increased competition in the European Economic Area. It goes without saying that the former regulation has the same objectives. The IATA guidelines state that competitive factors should be taken into account following other given criteria, cf. 8.4.1 in the guidelines.

Local guidelines should, at the least, stipulate the following:

- That the co-ordinator consider competitive factors when allocating time slots. The allocation rights of new and smaller parties are to be stipulated in more detail, taking into account mandatory criteria, such as grandfather rights.



- That the co-ordinator perform an evaluation on the competitive impact of allocation when assessing the aforementioned secondary criteria, with further details on what such a competition evaluation entails.
- That information is communicated to the co-ordinator, enabling him to evaluate competitive conditions at the airport. Further provisions detail what information is to be made available and the duty of parties to disclose it.

There is nothing to prevent aviation authorities from making efforts to issue such guidelines. The claims of Icelandic Transport Authority and the Ministry of the Interior's that they do not have the authority to initiate the issuance of local guidelines are without basis. The authorities are responsible for establishing rules of procedure for the co-ordination committee and can be represented on the committee. Council Regulation (EEC) No. 95/93 assumes direct involvement by the authorities in issuing local guidelines. According to information gathered by the ICA from slot co-ordinators at European airports, it is variable who issues the guidelines and who initiates them.

This is discussed in further detail in Opinion No. 1/2015, Section III. 9. The opinion recommends that the Icelandic Transport Authority make efforts to issue local guidelines.

11. Aviation authorities cannot deny their responsibility

Above, the ICA has argued the importance of competition in regular scheduled flights to and from the country and emphasised the competitive vulnerability of the market. It has also been proven that Icelandair, which has a dominant position in flights to and from the country, has priority when it comes to allocation of new time slots in the competitively important peak hours, at the expense of smaller competitors. There is nothing in EEA regulations or national law that calls for Icelandair to enjoy this priority, as grandfather rights do not apply to this. This, along with Keflavik Airport's unique position as the only realistic gateway to and from Iceland, is grounds for immediate action by aviation authorities.

The ICA considers it the duty of the Ministry of the Interior and the Icelandic Transport Authority, who govern the field, to take immediate action to reduce the competitive barriers identified by the ICA in the present opinion. Inaction is likely to harm the interests of customers and society as a whole.

In the present opinion and in the opinion addressed to the Icelandic Transport Authority, arguments are made for the current legal framework allowing certain measures to boost competition. It is recommended that the Minister of the Interior take all possible steps to undertake these measures. The Minister is further advised to consider, as Minister of Transport, adopting a strategy or rules to further support competition in this field.

The ICA believes that the problem is, in part, one of attitude. Judging by its communications with the Icelandic Transport Authority and ISAVIA, the ICA must conclude that these public entities hold a negative opinion of competition or do not comprehend the great public interest in maintaining active competition in the aviation market. Encouragement or guidance from the Minister of the Interior would be likely to change this.



The judgement of the EFTA Court from 10 December 2014 confirms that competition authorities can address competitive barriers resulting from the allocation of time slots. In this case, it was maintained that airlines had an unreserved right to keep time slots allocated to them on the basis of grandfather rights. The EFTA Court's judgement confirmed, however, that competition authorities could nevertheless take action in such cases. No assessment has been made in this case whether there are grounds for such intervention. In any event, the ICA believes that such intervention is not to be considered until aviation authorities have done everything in their power to ensure that slot allocation mechanism is not harmful to competition.

Considering all of the above, the ICA directs the following recommendations to the Minister of the Interior:



**III.
FINAL OPINION:**

The arrangement for allocation of time slots at Keflavik Airport disrupts competition to the detriment of customers, competitors in regular scheduled flights and society as a whole. With reference to Article 18, cf. item c of the first paragraph of Article 8 of the Competition Act No. 44/2005, the ICA directs the following recommendations to the Minister of the Interior:

Article 1

That the Minister take immediate action to reduce the competitive barriers defined herein. The actions taken shall give precedence to the public interest of having active competition in the operation of regular scheduled flights.

Article 2

Part of the action to be undertaken as part of Article 1 is ensuring that Keflavik Airport's designation as a co-ordinated airport be reviewed in accordance with the conclusion of Opinion No. 1/2015. If no change is made to the airport's designation, it is recommended that the Minister of the Interior undertake measures to issue local guidelines on competitive factors for the co-ordinator to take into account when allocating time slots.

The Icelandic Competition Authority

Páll Gunnar Pálsson