Benefits of U.S. Model Allowing Competition Among Privately Owned Airline Service Companies over European Model of Restrictive Access

BACKGROUND
A small group of airport authorities are considering providing airline above and below wing handling services with airport-owned equipment operated by airport employees as a means to increase airport revenue. While the advent of the European Commission Council Directive 96/67/EC in the late 1990s has led to competition among service providers at some European airports, European airports continue to provide airline handling services. Generally, airline handling in the U.S. is performed by airline- or privately owned companies and in some smaller airports by FBOs.

ISSUE
Should some U.S. airports adopt the European Model? A comparative review of airport airline services/ground handling models in the European Union and the United States convincingly demonstrates that competition among privately owned handlers in the U.S. has resulted in higher service and safety levels and is invariably the model of choice. While the European Commission has achieved significant progress in opening up competition through Council Directive 96/67/EC, the U.S. approach allows airlines to achieve greater cost savings as well as improved quality, efficiency and service levels.

The European Model
Upon receiving a number of formal complaints regarding the monopolistic, anti-competitive and inequitable provision of airport ground handling services at many Community airports, the European Council investigated the matter and subsequently developed and adopted (after much debate) Council Directive 96/67/EC, which introduced liberalization into the ground handling market. The October 1996 Directive called for a phased implementation over time and allowed for certain exemptions to minimize potential service disruptions and labor impacts. The pre-adoption debate pitted airport authorities against airlines and private providers of ground handling services.

In the nearly 12 years since adoption, progress has been made with increased quality, reduced costs and the emergence of additional third-party providers in many markets. But the industry consensus is that significant improvements are still needed and that the liberalization process needs to move at a much quicker pace.

The debate, however, rages on since the final Directive was essentially a negotiated compromise that maintained certain protections for the monopoly providers. Some argue that better implementation of existing regulations is needed, not new legislation. Others say let market forces determine the appropriate number of ground handlers at a given airport, and when demand is weak, the airport authority must step in and ensure that services are procured through an open, competitive process. Proponents of further liberalization strongly believe that a conflict of interest occurs when the airport operator is the regulator, landlord, operator of infrastructure and ground handling provider. They go on to say that the existing Directive does little to prevent such conflicts from occurring. In the end though, most would agree that artificial barriers to entry result in higher costs and inadequate service. This issue has spilled into the World Trade Organization and remains contentious.
While the EU Commission has vowed to continue studying airport ground handling liberalization, it is unclear what, if any, actions they will take to provide for a more competitive, open market.

**Council Directive 96/67/EC**

Key freedoms and restrictions of Council Directive 96/67/EC: Access to the Ground Handling Market at Community airports, include:

- **Freedom of Self-Handling** – applies to all Community airports regardless of traffic volumes. Where traffic exceeds one million passenger movements or 25,000 tonnes of freight annually, Member States may reserve the right to self-handle (baggage, ramp, fuel and oil, freight and mail) to no fewer than two airport users. When spatial constraints render opening up the market and/or self-handling impossible (per the Directive), Member States may decide to ban self-handling altogether or limit the provider to one airport user. These spatial constraints may also prompt a Member State to reserve self-handling to a limited number for services above and beyond those listed above.

- **Freedom of Third-Party Handling** – applicable to airports where traffic volumes exceed two million passengers or 50,000 tonnes of freight annually. Member States may reserve the right to self-handling for the same four categories listed above to no fewer than two suppliers per category. Of those two authorized suppliers, at least one must be independent of the airport operator and any dominant carrier. Member States may reserve to a single user one or more of the above listed categories if spatial constraints warrant.

- **Centralized Infrastructure** – Member States may centralize certain ground handling equipment and infrastructure and require said use and assess non-discriminatory and transparent access fees.

- **Separation of Accounts** – Where the airport operator, user or the supplier of ground handling services provide ground handling services, they must rigorously separate the accounts of their ground handling activities from the accounts of their other activities, in accordance with current commercial practice.

- **Exemptions** – Airport operators may seek temporary extensions of up to three years to limit the number of suppliers, ban self-handling or impose single-user limits for certain ground handling categories.

One of the structural problems with the Directive is it is just that, a directive and not a regulation. As such, Member States were required to pass national laws that incorporated the Directive’s provisions. But applying a broad-brush solution across all 27 EU Member States is a complex task and may not be the proper course of action to address what is essentially a moving target. The global airline industry and Europe in particular is evolving (or devolving, depending upon whom you ask) through consolidations, partnerships, alliances, bankruptcies, and the growing influence of low cost carriers. Airport operators have little choice but to evolve right along with the industry or stand idly by and watch their markets erode and fragment.

**The United States Model**

The underlying structure governing the provision of airport ground handling and most other airport services in the United States is set forth by an airport sponsor’s participation in the Federal Aviation Administration (FAA) Airport Improvement Program (AIP). Established by the Airport and Airway
Improvement Act of 1982, AIP provides financial aid to public agencies and authorities operating public-use airports for eligible capital developments in the areas of safety, capacity and noise compatibility. The program provides large and medium primary hub airports with grants covering up to 75 percent of eligible costs for projects including: runway, taxiway and apron construction and rehabilitation, airfield signage and lighting, planning and environmental studies, safety area improvements and hazard removal and identification. In 2007 alone, the FAA awarded over $3.2 billion in AIP grants to eligible US airports, with large hub airports such as LAX and JFK receiving grants totaling $51.6 million and $25.8 million, respectively. Given the ever-present conflict between budgetary constraints and capital improvement needs, most airport sponsors are not in a position to turn their backs on AIP funding and its associated legal obligations.

Clearly absent from the FAA's list of AIP eligible projects is airport ground handling and most other revenue generating airport functions. AIP’s governing provisions, however, are not triggered by a given project, but by the airport sponsor’s acceptance of an FAA grant offer and the associated terms, conditions and obligations, as defined by a series of “grant assurances.” It is through the AIP’s 39 specific assurances (called the “Sponsor Assurances” or “Grant Assurances”) that the FAA prohibits the granting of any exclusive rights and similarly requires an open and competitive environment based on reasonable terms without unjust discrimination for the provision of aeronautical activities and services at federally funded airports.

There are two principal Grant Assurances that establish the foundation for the U.S. model’s open and competitive market – Economic Nondiscrimination (#22) and Exclusive Rights (#23).

**Economic Nondiscrimination** – The FAA’s basic tenet ensuring economic nondiscrimination requires that airport sponsors “…will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.” Additional provisions require:

- Any airport service agreements, contracts or leases include language requiring that the services are furnished on a reasonable basis, without unjust discrimination with similar provisions for charges and fees.
- All fixed base operators (FBOs) are subject to the same rates, charges and fees and that any air carrier at an airport will have the right to self-handling or to use any airport-authorized FBO.
- All air carriers serving the airport will be subject to the same rates, charges and fees regardless of its tenant status (primary, sub-tenants or non-tenants).
- The airport is prohibited from granting any right or privilege that prevents any aircraft operator from performing any service on its own aircraft.
- If the airport elects to provide services itself, the same conditions apply as if it were a commercial service provider.

**Exclusive Rights** – This assurance specifically prohibits airport sponsors from entering into any exclusive rights for the use of the airport by “…any person providing, or intending to provide, aeronautical services to the public.” A single FBO is not considered an exclusive right if (1) it is unreasonable, costly or impractical for more than one FBO to provide services and (2) if an additional FBO would reduce the leased space between the single FBO and the airport.
At large-hub U.S. airports, an airline typically self(handles or contracts out to another airline on the field or an independent, third-party provider. Certain common-use functions such as aircraft fueling and interline baggage transfer are usually provided by third parties under contract to the airport operator. Again, the grant assurances require airports to utilize a fair, reasonable and open competitive bidding process to select any third-party providers. The assurances and associated federal oversight provide a virtual safety net for the competitive process, which in turn is driven by demand and market forces. Competition breeds lower costs and higher quality and safety.

Comparison

A major difference between the European and U.S. models is that U.S. commercial airports are traditionally independent of national control and are publicly owned and operated by local municipalities and/or public authorities. The airlines also play a major role in influencing airport management decisions, and all large and medium hub airports participate in the AIP. Since the late 1980s, many European airports have been sold to private companies and investors who in turn manage the facilities and set all applicable rates and charges. The Thatcher government’s conversion in 1987 of the British Airport Authority into BAA, plc paved the way for similar privatizations across Europe and around the world. In the 1990s, the U.S. flirted briefly with airport privatization, but a few small-hub publicly owned, contract-managed airports were the only resulting achievement. Since U.S. airport sponsors remain public agencies or authorities and most utilize federal funding, AIP’s uniform set of rules and regulations contained in the Grant Assurances apply across the board.

Another difference is that no large-hub airports in the U.S. provide ground handling services for their airline customers. An incentive exists, therefore, for dedicated ground handling firms to enter the marketplace and offer competitive and high quality services. In fact, many of the surviving U.S. legacy airlines (UA, AA, DL, and NW) have established separate operating entities to provide their own ground handling services as well as for the newer, low-cost carriers whose business plans do not include self-handling. United Services, for example, a subsidiary of United Airlines, provides customer service, ramp service, operations management and cargo services at 110 airports in 12 countries. One reason why airlines continue to provide these services is labor contracts that limit outsourcing. However, as airlines are not considered models of efficiency and labor unions agree to some far reaching concessions, the trend is away from airline-owned airline service companies to privately owned airline service companies.

By no means, however, is the U.S. model without flaws. MIA and LAS, for example, restrict the number of ground handlers. Limiting the number of handlers may not only be a violation of the Grant Assurances, but it can also lead to allegations of political cronyism, unfair bidding processes and sometimes no-bid contract awards at the airport. There is also a lack of standardization on ground handling policies, procedures and training.

As with previous airline industry cycles, the current round of airline consolidations, bankruptcies, etc. has forced many U.S. airport operators to seek to bolster revenues when airlines cease operations or pull out of a market. Certain small hub airports such as Mobile, Alabama, have started providing ground handling services themselves in an attempt to replace services that an airline previously performed. In 2002, the U.S. Department of Transportation issued a $457,000 grant to Mobile Regional Airport,
through the *Small Community Air Service Development Pilot Program* to provide the ground handling services that United Airlines used to provide for the airport’s air carriers. Airports in Chattanooga, Tennessee, and Springfield-Branson, Missouri, have followed suit in an effort to replace service or attract new airline business. This trend could result in the many efficiencies that exist in the European models and will have to be closely monitored to ensure that airports providing such ground handling services do so in a manner that does not hinder competition for those airlines that wish to self-handle or for independent, third-party providers.

**CONCLUSION**

The European Commission’s move toward liberalized airport ground handling has yielded mixed results. Cost reductions and quality improvements have resulted in certain markets and monopolistic policies still remain in others. The EC must continue the process established by Council Directive 96/67/EC and remove the many restrictions and exemptions that create barriers to entry, artificially inflate costs and reduce service quality. The U.S. structure, as defined by the FAA’s Airport Improvement Program, provides an appropriate model that encourages a more open and competitive market. U.S. airports should beware of following the same mistaken model employed in Europe and should remain competitive and free market friendly.

**ACTION NEEDED**

Please encourage Members of Congress to write to the FAA expressing their support for free competition of airline service companies and opposition to airport authorities providing these services either exclusively or in competition with privately owned entities.