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Impact of Enhanced Passenger Protection Regulations for Significantly Delayed and Cancelled Flights

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On May 8, 2023, the U.S. Department of Transportation (DOT) announced its intent to initiate a Rulemaking to address several aspects of airline passenger protection, which would include: compensation where there is a controllable airline cancellation or significant delay; a meal or meal voucher, overnight accommodations, ground transportation to and from the hotel, and rebooking for controllable delays or cancellations; timely customer service during and after periods of widespread flight irregularities; and a definition of a controllable cancellation or delay.[1]

While the Notice of Proposed Rulemaking (NPRM) has not yet been issued, the key elements identified in the DOT press release are similar to passenger protection regulations currently in place in Europe and Canada. Airlines for America® (A4A) engaged InterVISTAS to study the impacts of a potential application of these passenger protection regulations to U.S. airline operations. InterVISTAS examined the rules and impacts of three regulatory frameworks: (a) Europe's passenger protection regulation (commonly known as EU261) that has been in place since 2005; (b) a potential 2013 revision to EU261 that remains under consideration; and (c) Canada's Air Passenger Protection Regulation (APPR) that has been in place since late 2019, as modified by proposals currently under active consultation by the Canadian Transport Agency (CTA). This study relied exclusively on actual historical data on delays, cancellations, costs of customer care, passenger demand and fares, and data from a published European Commission funded study of EU261.

Nearly all U.S. carriers already provide care assistance to passengers when there is a cancellation or long delay attributable to the carrier. The European and Canadian passenger protection rules generate significant material costs because of the requirement for monetary compensation for long delays/cancellations (due to the carrier) and the mandate to provide customer care even when the carrier is not at fault.

Delayed and Cancelled Flights Are Rare for U.S. Airlines

U.S. airline operations have strong on-time arrival rates. Between 2013 and 2023, close to 80% of all operated flights arrived within 15 minutes of the scheduled flight arrival time, and 90~95% of passengers experienced flights that were either on time or delayed less than 60 minutes.[2] Further, U.S. carrier flights typically arrive at or before scheduled arrival time (A0) about 10% of the time more than EU carriers and between 10-20% of the time more than Canadian carriers. While all carriers struggled to mount fully effective operational recovery in the post-COVID rebound, European and Canadian carriers experienced notable declines in 2022 and 2023.

[1] https://www.transportation.gov/briefing-room/dot-propose-requirements-airlines-cover-expenses-and-compensate-stranded-passengers

[2] Assumes delayed flights as a group have similar passengers carried per flight as non-delayed flights.

Cancellations in the U.S. are rare, constituting approximately 2% of U.S. flights in each operating year (excepting 2020 and its COVID-related unprecedented operational impacts and constraints). Very late flights—those arriving more than 180 minutes late—are even rarer, affecting approximately 1% of U.S. flights in each year. The high on time performance of U.S. carriers combined with the rarity of cancellations and long delays suggests that U.S. carriers already seek to maximize on-time performance independent of a passenger protection regulation. Further, available data suggests that U.S. airline cancellation and very-late arrival rates are mostly driven by factors outside carrier control. U.S. Bureau of Transportation Statistics reporting indicates that about 76% of U.S. carrier cancellations are attributable to factors outside a carrier's control (such as air traffic control, weather, and/or security issues), while about 55% of U.S. carrier flight delays of two hours or greater are attributable to non-controllable factors. Thus, a DOT passenger protection regulation may have limited practical benefit in reducing delays and cancellations in the U.S.

European flights have lower rates of cancellations (about 1% of flights) and very delayed flights (0.3% to 0.4% of flights), but available data reporting suggests a higher share of European cancellations and very delayed flights are carrier-controllable. A comprehensive European Commission study of EU261 estimated that only 33% of EU carrier cancellations are outside the carrier's control, and only 30% of EU carrier flights delayed by at least two hours are outside carrier control. While we caution against overreliance on direct comparisons between European and U.S. data reporting that may involve different reporting and/or attribution standards, the magnitude of reported differences in carrier controllability between regions suggests that some or all of the relatively higher U.S. carrier rates of very delayed and cancelled flights are due to factors that U.S. airlines cannot control.[3]

Passenger Protection Regulations Could Unintentionally Negatively Impact Consumers

Because cancellations and very late flights are rare, the pool of passengers who would benefit from a DOT compensation mandate would be small—only about 1% of total passengers are on affected flights and eligible for compensation under an EU261 regulation as applied to the U.S. About 2% of passengers would be eligible for customer care. However, the high compensation levels mandated by EU261 and alternative regulations results in substantial new costs to carriers, as summarized in the section below. Such a cost elevation would then have significant unintended consequences as airlines react to the new costs, thus undermining the consumer gains purportedly intended by the passenger protection regulation:

- **Risk of fare increases**. Airlines are likely to increase fares to counteract the cost increase from the new regulation. To recover the incremental costs of EU261 completely (at a 100% claim rate), fares in all U.S.-related markets would need to increase by 2.8%. Total air-travel demand may decline as much as 3.1% in response to the fare increase for a loss of 29.4 million passengers, of whom 28 million would be lost in domestic U.S. markets. If airlines were to seek to preserve pre-regulation margins, available seats would likely decline by a similar percentage.

- **Risk to U.S. ULCC and hybrid carrier growth and potentially sustainability**. With lower average fares, fewer longer haul international flights and premium cabins, and generally higher rates of

[3] European and U.S. standards of carrier attribution differ, as do assumptions on the attribution of flight delays that impact subsequent flights.

irregular operations, ULCC and hybrid carriers would be proportionally more impacted by EU261. Only one of the six ULCC and Hybrid U.S. carriers profiled would have an incremental cost burden of EU261 that is consistently below 50 percent of the carrier's historic operating income between 2013 and 3Q2023. All other carriers are close to or above 50 percent in all years. Thus, unless airlines ultimately recover EU261 costs through higher fares, higher costs would undermine future ULCC and Hybrid carrier growth – thus harming future competition in the U.S. airline industry.

- **Risk of higher cancellation rates**. Passenger compensation for very delayed flights is quite high in both EU261 and Canada APPR—in the case of EU261, required compensation is twice the average U.S. fare for similar stage lengths. As a result, once passenger compensation is triggered, there is little economic incentive for an airline to continue attempts to operate a very delayed flight. Cancelling the very delayed flight allows the carrier to avoid variable flight costs such as fuel, landing fees, and potentially crew costs. This may increase the likelihood of flight cancellations, which is an inferior outcome for airline customers that likely involves greater total time displacement versus their original schedule. There is some evidence from EU carriers that EU261 is associated with relatively elevated cancellations of very late flights. Compared to U.S. carriers, European carriers had a higher ratio of cancellations versus 180+ minute late arriving flights in every year between 2013 and 2023.
- **Risk of reduced aircraft utilization and fewer seats for sale**. In reaction to EU261, European carriers may seek to enhance operational resilience through a higher spare-aircraft rate and/or fewer daily operating hours per aircraft. Systematic differences between EU and U.S. carriers in aircraft utilization not explainable by other known factors could suggest a risk in imposing a passenger protection regulation in the U.S. After adjusting for stage-length differences, U.S. network carriers operate aircraft about 3.1% longer (about 20 minutes/day longer) each day than their European network carrier counterparts. Among regional aircraft operations, U.S. carriers operate about 36 minutes/day longer, for a 4.5% utilization gap. While we caution that systematic differences in operational environments could also explain such aircraft utilization differences, if due to EU261 then imposing a passenger protection regulation creates a risk of either fewer flights and seats, or higher costs to operate current schedules. For example, if U.S. carriers reduced aircraft utilization to EU levels following an EU261-style regulation, then 35 million fewer annual seats would be operated and U.S. carrier revenue would decline by over $5 billion annually, negatively impacting reinvestments in product and human capital.

Passenger Protection Regulations Would Impose Significant Costs on Carriers

The three regulatory frameworks (current EU261, proposed EU261, and Canada APPR) each provide compensation for very late or cancelled flights, passenger care, and the right to a refund and rerouting of a passenger back to his or her point of origin under certain circumstances. U.S. carriers already provide options to affected passengers. Two elements of the regulations are new and would drive substantial increases in U.S. carrier costs:

- Compensation is required where there is a substantial delay or cancellation that is carrier attributable. Under EU261 for example, a carrier must pay between €250 / $265 and €600 / $636 depending on flight distance. For U.S. passengers, these penalty amounts are approximately double the current average fares paid for flights with a similar length of haul.

- Passenger care and overnight hotels must be provided for all substantial flight delays and cancellations, *regardless of cause*. Today, U.S. airlines typically provide these care elements for *airline-attributable* flight disruptions.

Applying EU261 to U.S. operations imposes a total cost to the U.S. airline industry of up to $7.1 billion annually, of which at least $5.2 billion is incremental to the passenger care, reimbursement, and rerouting cost that U.S. airlines already voluntarily bear today. The EU261 2013 proposed revisions would cost the industry up to $4.1 billion, an increase of $2.2 billion relative to today. Canada's APPR applied to U.S. operations would cost up to $7.0 billion, of which $5.0 billion is incremental to current customer care costs.

Based on current EU261, the total cost of passenger care and protection would account for up to 46% of *total* U.S. airline industry operating income for the four quarters ending 3Q2023. Incremental costs alone account for up to 33% of total industry operating income. Impacts would fall disproportionately on hybrid and ULCC carriers, because of their lower average fares (a fixed-dollar amount penalty has a greater percentage impact) and operational performance differences. The magnitude of these cost increases is likely to result in lower airline investments in human capital, product, and future capacity initiatives.

We conclude that a passenger protection regulation by DOT is:

- Unnecessary, because U.S. passenger airlines already achieve superior on-time arrival rates than comparable regions such as the European Union and Canada which have such a regulation
- Less likely to reduce very late arriving flights and cancellations, since for U.S. airlines these are driven disproportionately by factors outside airlines' control
- Likely to result in fare increases as airlines seek to recover the considerable costs imposed by the regulation, thus reducing demand and seats
- Likely to harm ULCC and hybrid carriers disproportionately, reducing competition
- Likely to induce higher cancellation rates
- A risk factor for aircraft utilization, which would reduce consumer flight options if reduced
- A significant new cost for U.S. carriers, resulting in lower investment in employees, product, and future capacity

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