Asserting Broad Authority or Circumventing Deregulation? FAA's Proposed Regulation of New York Airport Slot Transactions

By Benjamin Berlin and Graham Keithley

For seven years, the Federal Aviation Administration (FAA) has remedied the lack of slot rules at the busy New York City area airports with temporary orders that limit airlines' ability to transfer slots.[1] In January 2015, the FAA proposed new long-term slot rules that would, among other things, reinstate a secondary slot market, albeit with close oversight of the federal government to address alleged slot abuses by incumbent airlines. While the FAA and U.S. Department of Transportation (DOT) justify their review of slot transactions by pointing to the breadth of their statutory authorities and historical assertions of such authority, opponents see the proposed rules as an excessive power grab that echoes the governance of the former regulated industry and openly defies Congress. With the comment period now closed, the parties have marked their battle lines and will likely need judicial adjudication to determine agency authority over slot transactions.

The FAA's proposed rules govern slot management and transparency at LaGuardia Airport (LGA), John F. Kennedy International Airport (JFK), and Newark Liberty International Airport (EWR) (collectively, the New York area airports), allowing the DOT to review certain slot transactions for antitrust and public interest issues.[2] The FAA and DOT (collectively, the agencies) have asserted jurisdiction to review slot transactions under their existing statutory authorities to prevent unfair methods of competition, consider the public interest, and regulate the efficient use of airspace.[3] The major U.S. air carriers that hold large numbers of slots at the New York area airports, however, argue that Congress long ago stripped the DOT of its authority to review such transactions when deregulating the industry.[4]

If the Proposed Slot Rules are adopted as written, the rules likely will be challenged in court,[5] where the agencies often enjoy the benefit of *Chevron* deference in interpreting the scope of their potentially ambiguous statutory authorities. Yet, challengers may have a well-grounded argument that the Proposed Slot Rules would violate Congress's allocation of authority and responsibilities among the DOT, FAA, and U.S. Department of Justice (DOJ).[6]

This article examines the agencies' asserted authority to adopt the Proposed Slot Rules and the case that such rules would violate Congress's allocation of authority and responsibilities. We also briefly discuss the level of deference a court would afford the agencies' interpretation of the various legislation—the Civil Aeronautics Act of 1938, the Federal Aviation Act of 1958, and the Airline Deregulation Act of 1978—that forms the agencies' statutory authority today.

Proposed Slot Rules

Under the Proposed Slot Rules, the FAA would refer all "standalone slot transactions" to the DOT except transactions that involve a small number of slots (fewer than eight).[7] The DOT also proposes to exempt "more routine types of transactions" involving (1) limited terms, (2) one-for-one trades among incumbents, or (3) transfers to new entrants or incumbent airlines that hold or operate a relatively small proportion of the slots at an airport.[8] The DOT would review the transaction for its competitive effects, including changing market structures, unreasonable industry concentration, excessive airline domination at an airport, or an environment that would facilitate monopoly powers or practices (e.g., the ability to raise fares). While the DOT would coordinate, cooperate, and consult with the DOJ, it would conduct its own competitive review. For the public interest effects, the DOT would consider adverse effects on the traveling public, service to small communities, service through secondary or satellite airports, or "other areas." The slot would not be available for the transferee's use until the agencies complete the review process and the FAA approves the transaction. Moreover, the DOT asserts separate authority to investigate and prohibit unfair or deceptive practices or unfair methods of competition, as provided by 49 U.S.C. § 41712.

The FAA proposed the slot transaction review to address allegations that incumbent slot holders limit competitors' access to New York area airports and avoid

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the loss of slots under usage requirements through slot transactions.[9] Most major U.S. airlines—through Airlines for America (A4A) and joined by the International Air Transport Association (IATA)—and others dispute these allegations and challenge the agencies' exertion of authority.[10] Meanwhile, the agencies have the support of two major U.S. airlines,[11] other U.S. airlines,[12] and a number of airports and airport authorities, including the Port Authority of New York and New Jersey, which operates, but does not own, the New York area airports.[13]

The Proposed Slot Rules are also the FAA's attempt at a "long-term and comprehensive" approach to New York area airport slots, which have been subject to repeatedly extended temporary orders.[14] In 1968, the FAA first began regulating slots at New York area airports to alleviate delays and congestion with the High Density Rules (HDR), relying on its authority to consider the public interest, regulate the use of airspace and air navigation facilities, prescribe air traffic rules, and prescribe rules and standards for civil aircraft flight safety.[15] With the HDR, the DOT occasionally resolved slot allocation deadlocks in the airline scheduling committee and reallocated slots from incumbent airlines to new entrants, but the agencies exercised their authority to regulate for the efficient utilization of navigable airspace.[16]

After deregulation, the government opened the door to slot transactions and a secondary market in 1985.[17] In 2000, Congress enacted the Wendell H. Ford Aviation and Investment Reform Act for the 21st Century (AIR-21), which phased out the slot limitations, resulting in congestion and delays.[18] In response to the delays and congestion, the FAA has taken a "piecemeal" approach, issuing short-term operating orders that: (1) limit the number of operating authorizations at each airport, (2) terminate upon adoption of a final rule, (3) prohibit the transfer of the operating authorizations beyond the duration of the orders, and (4) require FAA confirmation and approval before transfer of the operating authorizations.[19] The FAA has issued the orders under its statutory authority to regulate the safe and efficient use of airspace and/or the required consideration of public interest factors.[20] Now the agencies propose to expand their slot transactions oversight under their existing statutory authority.

The Agencies' Asserted Review Authorities

No statute explicitly instructs the DOT or FAA to review airlines' slot transactions. Accordingly, the agencies primarily rely on three existing statutory authorities: (1) the investigation, determination, and prohibition of unfair methods of competition; (2) the obligation to carry out duties in accordance with specific public interest considerations; and (3) the regulation of the use of navigable airspace.

First, the DOT relies on its authority to investigate, decide whether an airline is engaged in, and prohibit "unfair method[s] of competition" under section 41712.[21] The DOT characterizes its authority as "prohibit[ing] airline conduct comparable to antitrust violations,"[22] and the statutory language echoes the antitrust authority of the Federal Trade Commission Act.[23]

The agencies' reliance on section 41712 may be familiar because the FAA asserted the DOT's jurisdiction over slot subleases under section 41712 in 2008.[24] Unlike the currently proposed rule (14 C.F.R. § 93.47), which explicitly authorizes the DOT review to "determine adverse public interest and/or anticompetitive effects, as described in 49 U.S.C. § 40101(a)" and reserves the DOT's authority to take action under section 41712 (proposed 14 C.F.R. § 93.47(d)),[25] the 2008 slot subleasing rules merely recognized that the DOT "already has the authority under [section] 41712 to investigate, prohibit, and impose penalties" for unfair methods of competition and required the airlines to file sublease details with the FAA.[26] The rules were challenged principally for other reasons and ultimately withdrawn for reasons apart from the FAA's assertion of DOT authority.[27]

The DOT acknowledges that it has never used section 41712 to bring an enforcement action regarding airline slot transactions,[28] but one airline tried unsuccessfully to get the DOT to do so. In 2003, AirTran asked the DOT to exert its authority over unfair methods of competition to prevent a slot reallocation at DCA among four airlines.[29] After the planned reallocation was abandoned, the DOT found AirTran's complaints to be moot and did not answer the question of whether it had the power to order the divestiture of slots. Contrary to the objections of the subject airlines, the DOT stated that it had "broad authority under [section 41712]" to address AirTran's complaints.[30]

Second, the agencies rely on Congress's purported instructions that the DOT "carry out the pro-competitive aspects of the Airline Deregulation Act" (ADA).[31] The DOT looks to the congressional mandate that the DOT consider, when carrying out its duties: (1) preventing unfair or anticompetitive practices in air transportation; (2) avoiding market domination, monopoly powers, and other conditions that would tend to allow an airline to increase prices, reduce services, or exclude competition; (3) encouraging, developing, and maintaining a system relying on actual and potential competition; (4) encouraging competitive entry; and (5) ensuring consumer access to affordable, regularly scheduled air service.[32] The agencies note that Congress instructed the DOT to consider these factors to be in the "public interest" and afforded the agencies discretion to identify other potential factors that may be in the public interest.

The agencies seek to validate their reliance on the congressional requirements with the FAA/DOT's

application of the public interest factors in the 2010 review of Delta Air Lines' and US Airways' slot transaction, where the DOT ultimately required the divestiture of slots at LGA and DCA to remedy effects that the DOT (and DOJ[33]) perceived as anticompetitive. Responding to the parties' request for a waiver of the prohibition on sale of LGA slots, the agencies cited the "pro-competitive policies" of the ADA, many of the same statutory public interest factors that the agencies now invoke for the new slot rules, and the availability of "adequate, economic, efficient, and low-priced services."[34] The review, described as "independent" and "complementary" to the DOJ's review, also invoked a declared authority to consider "fostering of competition" to be in the public interest.[35] The FAA also notes that, in the 2010 review, the DOT clarified that the DOJ's authority to reject anticompetitive transactions "[does] not remove the DOT's responsibility to carry out its programs consistently with the [procompetitive] public interest criteria" required by Congress.[36]

Third, for the FAA's more limited role in the proposed review process—referring the transaction to the DOT—the FAA calls upon its "broad authority" to regulate the use of navigable airspace and specific authorities to (1) develop plans and policy for the use of navigable airspace and to assign the use the FAA deems necessary for safe and efficient utilization, and (2) prescribe rules and regulations governing the efficient utilization of navigable airspace. The FAA reads this authority to require that the FAA ensure efficient use of navigable airspace that "does not effectively shut out potential operators at the airport" and "takes account of competitive market forces."[37] In turn, the FAA states that it should ensure the slot rules "do not inefficiently constrain competitive market forces," but must "strike a balance" between promoting competition and new entrant access with historical airport investments and continuity.[38]

In sum, the FAA appears to have two primary bases on which it asserts the agencies' authority to implement the Proposed Slot Rules. First, the FAA relies on the broad, and potentially ambiguous, statutory language for the agencies' authority to consider antitrust effects and public interest factors. For example, when the FAA looks to its authority over the "efficient" use of airspace, it includes competitive effects. However, reliance on certain arguably ambiguous words may be inadequate because statutory provisions are not examined in isolation and their meaning may only become evident when placed in context of the statute and larger legislative framework.[39] For the DOT, the agencies appear to avoid this potential issue and look to the multiple broad public interest considerations that the DOT must consider and explicitly include competitive effects, as well as the DOT's facially broad competition protection authority under section 41712.

Second, the FAA seemingly looks to the history of the agencies' assertion of the currently relied-upon authorities for past slot transactions and slot rules. Although unlikely to be dispositive as to whether the statutes include the asserted authority, the agencies may not face the circumstance of having their own long-standing and contrary interpretation be used as evidence of a congressional intent that is contrary to their current interpretation.[40]

While having a history of interpreting the statutes in their own favor and despite having the benefit of *Chevron* deference for the interpretation of broad and potentially ambiguous statutory language, the agencies may face significant statutory interpretation challenges.

A4A Argues That Review of Slot Transactions Exceeds the DOT's and FAA's Authority

A4A's principal arguments to sever the slot transaction review from the final rule focus on what A4A sees as a lack of statutory authority for such review. First, A4A argues that section 41712 does not support the DOT's competitive review of slot transactions.[41] Under the Civil Aeronautics Board Sunset Act of 1985, Congress stripped the DOT of its authority to conduct competitive reviews of mergers and acquisitions. A4A argues that it strains credulity that, at the same time Congress removed the DOT's authority to conduct competitive reviews of airline transactions, it vested the DOT with that same authority under section 41712 under the guise of preventing "unfair methods of competition." Instead, A4A contends that section 41712 is a consumer protection statute that fills the gap created by the Federal Trade Commission's (FTC's) lack of jurisdiction over airlines.[42] A4A, alleging agency overreach, argues that the DOT has never applied its section 41712 authority to airline asset transactions. Moreover, even if section 41712 does authorize competitive review of slot transactions, A4A argues that the presumption that nearly all transactions are problematic violates the plain language of section 41712[43] and due process and turns the DOT's section 41712 enforcement policy "on its head."

Second, A4A argues that the DOT and FAA cannot rely on the prior practice of invoking competition authority over slots, including their review of the Delta–US Airways slot swap, to create statutory authority that does not exist.[44] A4A also contends that the DOT's argument that the "efficient use of airspace" under section 40103(b) made in support of its review of the Delta–US Airways slot swap offers no more support now than it did then; nothing in the statute's plain language or legislative history suggests that, in using the term "efficient," Congress intended to vest the FAA with authority to conduct competition reviews.[45] A4A also argues that the agencies' reliance on the procompetitive policies of the ADA is equally unavailing because Congress withdrew authority for the DOT to perform competitive reviews of mergers

and asset transactions, placing sole responsibility for those functions with the DOJ. In fact, A4A suggests that the two-part process is an implicit acknowledgment that the FAA lacks authority to conduct competitive reviews.

Third, A4A argues that the agencies do not have the general authority to conduct competition reviews of slot transactions under antitrust law standards; rather, that authority rests solely with the DOJ.[46] A4A argues that section 40103 of title 49, which confers authority on the FAA to regulate the nation's airspace, limits the FAA's consideration of the public interest to the safety of aircraft and the efficient use of airspace. For support, A4A points to the legislative history of the DOT's statutory authority, which shows that the secretary's powers and duties concerning aviation safety are transferred to the FAA, and notes that many of the FAA's statutory duties are found in a subpart of title 49 labeled "Safety." A4A argues that (1) the proposed review mechanism violates the statutory prohibition on submitting FAA decisions regarding the use of airspace to the DOT for coordination or approval; and (2) the DOT has no authority to insert public interest considerations reserved for economic regulation into the FAA's airspace regulations.

Finally, A4A argues that section 11 of the Clayton Act does not give the DOT antitrust authority over slot transactions because the DOT's authority is limited to transactions that are within the secretary's authority to regulate under the Federal Aviation Act and ADA—an area that does not include slot transactions.[47] Any other interpretation would mean there is no limit to the DOT's authority.

Standard of Review

If the rules are adopted as proposed and are challenged on the ground that the agencies misinterpreted their statutory authority to impose the Proposed Slot Rules, the agencies' interpretation would be analyzed under the *Chevron* framework. Although some courts have hesitated to defer to an agency's interpretation of its own jurisdiction, the U.S. Supreme Court confirmed in 2013 that the *Chevron* framework applies even to agency interpretations of a statutory ambiguity that concerns the scope of the agency's statutory authority (i.e., its jurisdiction).[48]

If *Chevron* is applied, two familiar questions must be answered to determine whether the agencies have correctly interpreted the statutes to enact the Proposed Slot Rules: (1) whether Congress has directly spoken to the precise question; and (2) if not, whether Congress has left the language silent or ambiguous.[49] If Congress has spoken, as the major airlines allege, the court and the agencies must give effect to the unambiguous congressional intent.[50] Some of the key factors to determine whether Congress has spoken include not only the statutory language itself, but also the broader statutory scheme, statutory history, and past interpretations. If Congress has not spoken and the authorities are found to be ambiguous, however, the challengers have a considerably more difficult standard to overcome. If the agencies' interpretation is merely found to be "reasonable," the review rule likely would stand under a court's *Chevron* deference to the agencies.[51]

Even if a court determines that the agencies have the authority to review slot transactions for antitrust issues, opponents of the Proposed Slot Rules may attempt to derail the final rule by raising a number of potential deficiencies under the Administrative Procedure Act, including the argument that the Proposed Slot Rules are arbitrary and capricious because, for example, the FAA has not demonstrated a need for review of slot transactions, has failed to provide clear standards for slot transaction review, and did not impose a time limit on the DOT's proposed review.

Conclusion

Unless the FAA removes the slot transaction review and other requirements from the Proposed Slot Rules, a court challenge is likely. The FAA will likely rely on the considerable deference given to agencies under the *Chevron* framework, particularly with the broad, and potentially ambiguous, statutes conferring authority on the DOT and FAA. However, challengers have presented strong points that when looking at the more general scheme established more recently by Congress, and the fact that Congress took away certain DOT review powers, the DOT has been divested of its authority to review slot transactions. Ultimately, the final rules, if issued to include slot transaction review, will prescribe the nature of any challenge and defense of the agencies' authority.

Endnotes

1. The FAA's temporary orders impose operating limitations at the New York City area airports and assign "operating authorizations" to the air carrier that previously held the equivalent slot or slot exemption.

2. Slot Management and Transparency for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport, 80 Fed. Reg. 1274, 1304 (Jan. 8, 2015) [hereinafter Proposed Slot Rules].

3. *Id.* at 1291.

4. *See* Comments of Airlines for America Concerning FAA/DOT Slots Authority, Docket No. FAA-2014-1073 (May 8, 2015) [hereinafter A4A Comments]. Alaska Airlines and Southwest Airlines did not join the A4A Comments. A4A opposes the FAA's proposed rules in general, arguing that the FAA should maintain the status quo by continuing to regulate by means of "operating authorizations" under final rules, but permitting carriers to engage in permanent slot transfer transactions. *Id.* at 4.

5. Other proposed slot rules for the New York area airports have been challenged in the past. For example, the Congestion Management Rule for LaGuardia Airport, 73 Fed. Reg. 60,574 (Oct. 10, 2008), and the Congestion Management Rule for John F. Kennedy International Airport and Newark Liberty

International Airport, 73 Fed. Reg. 60,544 (Oct. 10, 2008), which proposed an auction allocation system for slots and DOT monitoring of slot subleases for unfair methods of competition, faced numerous legal challenges. *See, e.g.*, Port Auth. of N.Y. & N.J. v. FAA, No. 08-1329 (D.C. Cir. Oct. 14, 2009) (dismissing petitions for review of congestion management rules after the FAA rescinded the rules).

6. *See* A4A Comments, *supra* note 4, at 2.

7. While "small" transactions of fewer than eight slots in total would not be subject to review under the Proposed Slot Rules, the DOT may consider multiple transactions within a three-year period as constituting a single aggregate transaction that would be subject to review. *See* Proposed Slot Rules, 80 Fed. Reg. at 1304 (to be codified at 14 C.F.R. § 93.47(a)).

8. *Id.* at 1293. The Proposed Slot Rules define a "new entrant" as "a U.S. or foreign air carrier that holds or operates fewer than 20 slots on any day of the week, in any combination during the slot-controlled hours, at the respective airport." *Id.* at 1300 (to be codified at 14 C.F.R. § 93.36). Thus, for purposes of the Proposed Slot Rules, an incumbent is implicitly defined as any carrier that is not a "new entrant."

9. *Id.* at 1291.

10. *See, e.g.*, Comments of the Regional Airline Association at 1, 3, Docket No. FAA-2014-1073 (May 8, 2015); Comments of Scandinavian Airlines System (SAS) at 7, Docket No. FAA-2014-1073 (May 8, 2015).

11. *See* Comments of Alaska Airlines, Inc. at 5, Docket No. FAA-2014-1073 (May 8, 2015); Comments of Southwest Airlines Co. at 17–18, Docket No. FAA-2014-1073 (May 8, 2015).

12. *See, e.g.*, Comments of Frontier Airlines, Inc. at 18, Docket No. FAA-2014-1073 (May 8, 2015); Comments of Virgin America Inc. at 19, Docket No. FAA-2014-1073 (May 8, 2015).

13. *See, e.g.*, Comments of Airports Council International—North America at 8, Docket No. FAA-2014-1073 (May 8, 2015); Comments of the Metropolitan Washington Airports Authority at 12–13, Docket No. FAA-2014-1073 (May 8, 2015) (supporting the FAA's expanded use of its legal authority to prevent unfair competition and protect the public interest); Comments of the Port Authority of New York and New Jersey at 52, Docket No. FAA-2014-1073 (May 8, 2015). 14. Proposed Slot Rules, 80 Fed. Reg. at 1284.

15. *See* Part 93—Special Air Traffic Rules and Airport Traffic Patterns, High Density Traffic Airports, 33 Fed. Reg. 17,896 (Dec. 3, 1968) (citing sections 103, 307(a), (b), and (c), 313(a), and 601 of the Federal Aviation Act of 1958). Washington National Airport (DCA) and Chicago O'Hare International Airport (ORD) were also subject to the rules. The EWR slots were suspended in 1970 because airport capacity could meet demand. *See* Part 93—Special Air Traffic Rules and Airport Traffic Patterns, High Density Traffic Airports, 35 Fed. Reg. 16,591 (Oct. 24, 1970).

16. *See* Nw. Airlines, Inc. v. Goldschmidt, 645 F.2d 1309, 1314 (8th Cir. 1981) (upholding the FAA's Special Federal Aviation Regulation (SFAR) reallocating slots at DCA and the secretary's interpretation that the statutory authority to ensure efficient utilization of navigable airspace encompasses authority to allocate slots at DCA).

17. High Density Traffic Airports; Slot Allocation and Transfer Methods, 50 Fed. Reg. 52,180 (Dec. 20, 1985) (codified at 14 C.F.R. pt. 94, subpt. S).

18. Pub. L. No. 106-181 (2000). The act did not phase out the HDR at DCA, which remains the only HDR airport.

19. *See* Operating Limitations at Newark Liberty International Airport, 73 Fed. Reg. 29,550 (May 21, 2008) [hereinafter EWR Slot Order]; Operating Limitations at John F. Kennedy International Airport, 73 Fed. Reg. 3510 (Jan. 18, 2008) [hereinafter JFK Slot Order]; Operating Limitations at New York LaGuardia Airport, 71 Fed. Reg. 77,854 (Dec. 27, 2006) [hereinafter LGA Slot Order]. The FAA has repeatedly extended these orders, which currently remain in effect.

20. *See* EWR Slot Order, 73 Fed. Reg. at 29,554 (citing 49 U.S.C. §§ 40101, 40103); JFK Slot Order, 73 Fed. Reg. at 3516 (citing 49 U.S.C. §§ 40101, 40103); LGA Slot Order, 71 Fed. Reg. at 77,854 (citing 49 U.S.C. § 40103).

21. Proposed Slot Rules, 80 Fed. Reg. at 1291 (citing 49 U.S.C. § 41712).

22. *Id.* at 1291.

23. *See* Federal Trade Commission Act § 5(a), 15 U.S.C. § 45(a).

24. *See* Congestion Management Rule for LaGuardia Airport, 73 Fed. Reg. 60,574, 60,590 (Oct. 10, 2008); Congestion Management Rule for John F. Kennedy International Airport and Newark Liberty International Airport, 73 Fed. Reg. 60,544, 60,559 (Oct. 10, 2008).

25. Proposed Slot Rules, 80 Fed. Reg. at 1304.

26. *See* Congestion Management Rule for LaGuardia Airport, 73 Fed. Reg. at 60,590.

27. *See* Congestion Management Rule for LaGuardia Airport, 74 Fed. Reg. 22,717 (May 14, 2009) (notice of proposed rescission); Congestion Management Rule for John F. Kennedy International Airport and Newark Liberty International Airport, 74 Fed. Reg. 22,714 (May 14, 2009) (notice of proposed rescission).

28. Proposed Slot Rules, 80 Fed. Reg. at 1291.

29. Third-Party Complaint of AirTran Airways, Inc. and Request to Commerce Enforcement Proceeding, Docket No. OST-2001-8948 (Feb. 21, 2001).

30. Third-Party Complaint of AirTran Airways, Inc. v. Am. Airlines, Inc., Docket No. OST-2001-8948, Order 2003-10-7 (Oct. 7, 2003).

31. Proposed Slot Rules, 80 Fed. Reg. at 1291.

32. *Id.* (citing 49 U.S.C. § 40101(a)(9), (10), (12), (13), (16)).

33. *See* Comments of the United States Department of Justice, Docket No. FAA-2010-0109 (Mar. 24, 2010); Reply Comments of the United States Department of Justice, Docket No. FAA-2010-0109 (Apr. 5, 2010).

34. Petition for Waiver of the Terms of the Order Limiting Scheduled Operations at LaGuardia Airport, 76 Fed. Reg. 63,702, 63,704, 63,709 (Oct. 13, 2011) (citing 49 U.S.C.

§ 40101(a)(4)).

35. *Id.* at 63,704.

36. Proposed Slot Rules, 80 Fed. Reg. at 1292.

37. *Id.* at 1274.

38. *Id.* at 1275.

39. *See* FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 132 (2000).

40. *See id.* at 157.

41. A4A Comments, *supra* note 4, at 18–22.

42. A4A also argues that the FTC has never interpreted its section 5 authority (on which section 41712 was modeled) to allow it to prohibit, indefinitely, an entire class of transactions.

43. Under 49 U.S.C. section 41712(a), the secretary "may investigate and decide whether an air carrier, foreign air carrier, or ticket agent has been or is engaged in an unfair or deceptive practice or an unfair method of competition in air transportation or the sale of air transportation."

44. A4A Comments, *supra* note 4, at 22–25.

45. A4A's argument is bolstered by the precept that the words of a statute must be interpreted "with a view to their place in the overall statutory scheme." *Brown & Williamson*, 529 U.S. at 133.

46. A4A Comments, *supra* note 4, at 12–18.

47. *Id.* at 25–26.

48. *See* City of Arlington, Tex. v. FCC, 133 S. Ct. 1863 (2013) (holding that a court must defer under *Chevron* to an agency's interpretation of a statutory ambiguity that concerns the scope of the agency's authority). This deference is based on the "implicit delegation from Congress to the agency to fill in the statutory gaps." King v. Burwell, 135 S. Ct. 2480, 2488 (2015).

49. Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 841–43 (1984).

50. *Id.*

51. *See* Antipova v. U.S. Att'y Gen., 392 F.3d 1259, 1261 (11th Cir. 2004) ("We review the agency's statutory interpretation of its laws and regulations *de novo*. However, we defer to the agency's interpretation if it is reasonable and does not contradict the clear intent of Congress." (citation omitted)).