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ACRP Legal Research Digest 37: Legal Issues Relating to Airports Promoting Competition

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Kaplan Kirsch & Rockwell attorney Eric Smith authored a report that explores permissible means and methods of encouraging and accommodating competition at U.S. airports. It discusses the history of how competition has been addressed by government and airports and provides the context of the concentration of air carriers and fixed-base operators (FBOs), the accommodation of air carriers with differing business models, and avoiding the grant of exclusive rights when aeronautical service providers merge.

Competition among airlines and FBOs at U.S. airports presents a myriad of issues for the airport sponsor, its executives and for local elected officials—all of whom themselves often face multidimensional challenges and needs. U.S. airports, and especially those which have used federal airport improvement funds, operate within a unique atmosphere.

Congress, through the enactment of airport funding legislation, created a broad and general framework within which airport sponsors must operate. Much of this general framework has been supplemented by the U.S. Department of Transportation/Federal Aviation Administration and provides airport sponsors with some further guidelines within which airports must operate. This framework/guidance, however, relies largely upon general standards such as dealing with airlines and FBOs in a “reasonable” and “not unjustly discriminatory” manner. Given this fact, the resolution of competition issues at any particular airport is necessarily highly dependent upon the locally-derived factual context and, therefore, requires locally-derived solutions.