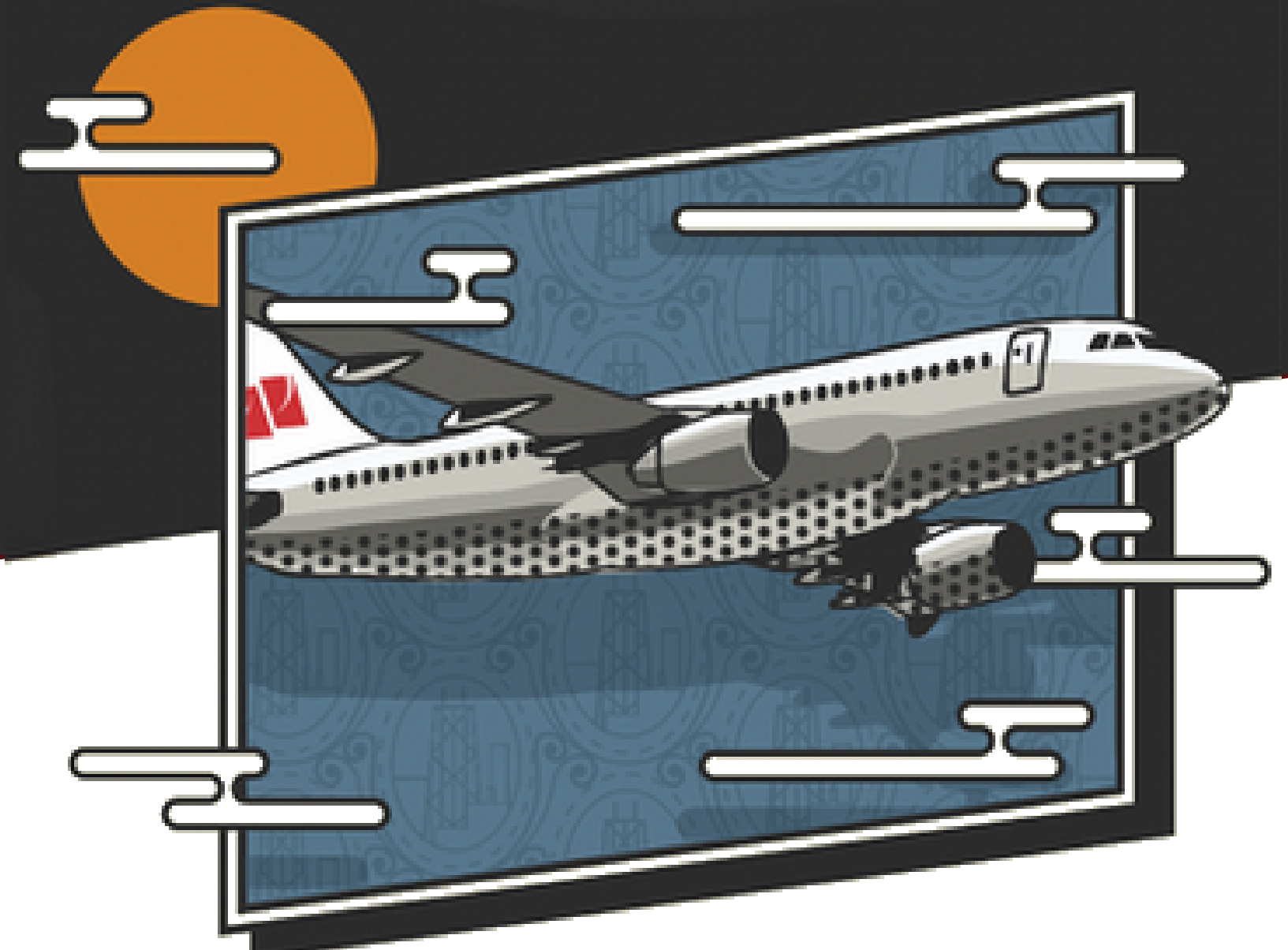


40th Annual
Airport Law Workshop



Session #7

Negotiating Airline Use and Lease Agreements

Speakers

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Airline Use and Lease Agreements

What are they?

- Govern the **business relationship** between the airlines and the airport
- Establish **methodology** for setting airline rates and charges
- Set forth **priorities** for the use and assignment of gates
- Provide for **airline involvement** in capital expenditures
- Each airline signs the **same form** of the AULA – but AULAs are *not* uniform across airports



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Airline Use and Lease Agreements

Is there an alternative?

- Most airports enter into AULAs
- Airports may instead set rates unilaterally by ordinance
 - Still requires consultation with the airlines
 - May not charge airlines for certain costs unless there is AULA



Airline Use and Lease Agreements

Legal framework

- Federal law
- FAA regulations and policy
 - *FAA Rates and Charges Policy*
- Grant Assurances
- Part 13 and Part 16 decisions
- Caselaw
 - Federal (appeals of Part 16 decisions)
 - State law (contract issues)



Airline Use and Lease Agreements

When do I have to worry about this?

- Current status at your airport
 - Airline agreements can affect just about every legal relationship
 - Expiration date and status of current agreement
 - Plans for major capital improvements
 - Whether new entrants are anticipated
 - How recently current AULA was updated



Preparing for AULA negotiations

How much time do I need?

- Negotiations can take **2+ years** from start to finish
- But it can range a lot; depends on –
 - Airport size
 - Number of airlines operate
 - Airport sponsor goals
 - Modifications to current agreement
- Start early! AULA negotiations are not typical lease negotiations

Negotiations process

1. Before airlines are engaged

- Need **3–6 months** to prepare *before* engaging the airlines

2. Negotiations with airlines

- Need **9–12 months** to negotiate an agreement *with* the airlines

3. After reaching agreement with the airlines...

- Final agreement execution can take **3–4 months** *after* negotiations are completed
- Required local approvals can take months

Preparing for AULA negotiations

Where do I start?

1. Create core negotiating team

- In-house lead
- Outside experts (e.g., legal counsel, financial consultant, lease negotiator, etc.)

2. Review the current AULA with airport departments

- Finance
- Risk
- Properties/Operations
- Environmental

3. Internal review

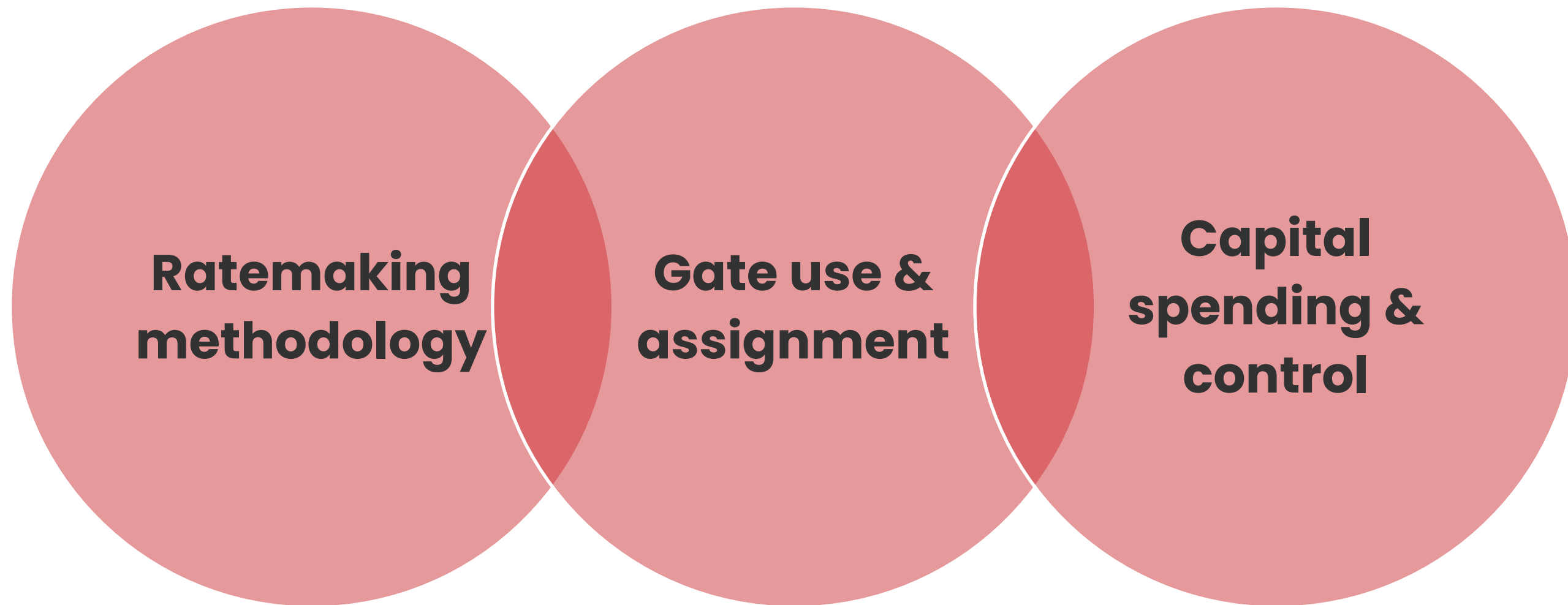
- Assess goals, needs, desired changes

4. Set key goals

5. Develop list or matrix of issues

Major topics in the AULA

What are the items airport and airlines will care most about?



Preparing for AULA negotiations

What are some strategic considerations?

- What does 'success' mean for the airport?
- How will the airlines likely respond to the airport's priorities?
- Major capital program needs

Understand different airline models and their different requirements

Preparing for AULA negotiations

Deciding on ratemaking approach

- Understand current rate model and methodology
- Consider pros/cons of changes
- Perform financial modeling for various scenarios



Preparing for AULA negotiations

Deciding on ratemaking approach

- Cost allocation
- Effect of major capital improvement program on rates
- Effect of new entrants or departures from market
- Need for cash reserves
- Relative cost per enplanement
- Consequences of rates by ordinance

Preparing for AULA Negotiations

Structure of airline discussions

- Airport sets negotiation schedule
- Airline representatives from each airline
- Give adequate notice of forthcoming negotiations
- Prepare position in advance
 - Pros/cons of specific proposals
 - Financial modeling for various scenarios



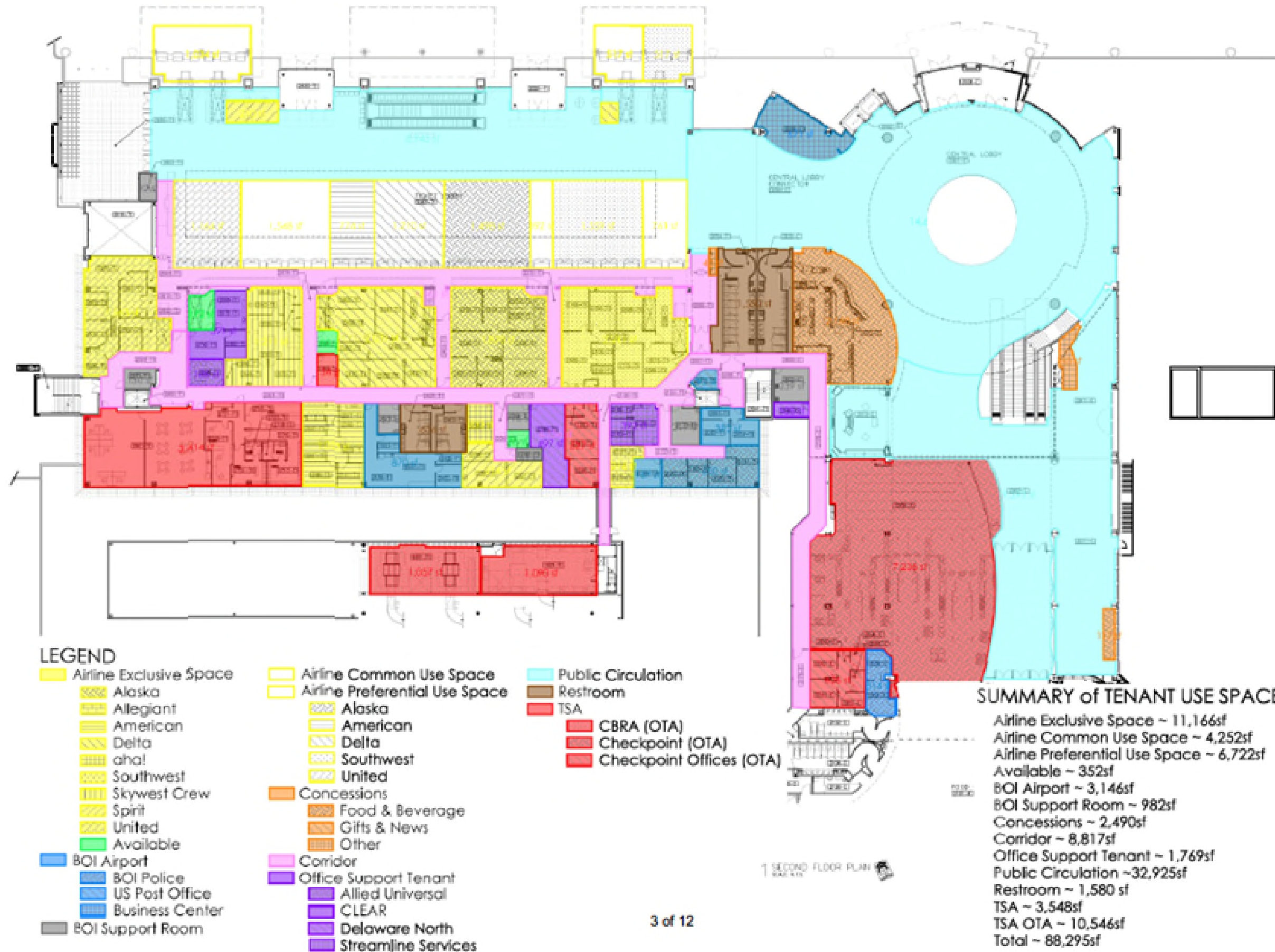
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Negotiations strategy

- Additional items might require negotiation:
 - Term, extensions, holdovers
 - Insurance and indemnification
 - Environmental provisions
 - Assignment and subleasing
 - Federally required provisions
 - Termination and default
 - Third party handling arrangements
 - Force majeure
- Keep airport stakeholders (i.e., elected officials) informed
- Leave time for internal legal review

KEY ISSUES: Joint Use Formula



Common/Joint Use Formula

- Typical today in larger airports: “80/20”
- In smaller airports: 90/10 or 100%
- ULCC / network / legacy carriers have different views
- Recent approaches: sensitivity impact analysis; bag system analysis
- Must understand the arguments among the airlines
- Legal implications (e.g., GA22)

KEY ISSUES:

Days Cash on Hand



Days Cash on Hand (DCOH)

- Backstop to debt service and operating expense obligations
- Cash is king! Key metric from rating agencies
 - Unrestricted cash vs. restricted obligations
 - Sources of the unrestricted cash
 - Airline revenues vs. Non-airline revenues
 - Non-airline revenues 'exposure'
- How many DCOH is enough?
 - 180 / 365 / 545 / 720+

KEY ISSUES: Capital Projects



- Airlines want control over major capital spending through a Majority-in-Interest (MII) process
- Airlines may pre-approve some capital improvements
 - Avoid having to return to airlines for repeated approvals
 - Sets financial expectations
 - Avoid roadblocks during the term
- Gets airlines involved early
- Often involves lengthy negotiation:
 - Cost increases/scope changes
 - Airline participation in governance
- Significant role in proposal for term
 - May want to have term last through DBO of expanded facilities

KEY ISSUES: Gate Use & Assignment



- Preferential rights vs. common use rights
 - No industry standard definitions
- Principles to consider:
 - Recapture of underutilized gates
 - Forced accommodation
 - Priorities for assigning use of common use gates

KEY ISSUES:

Gate Use and Assignment

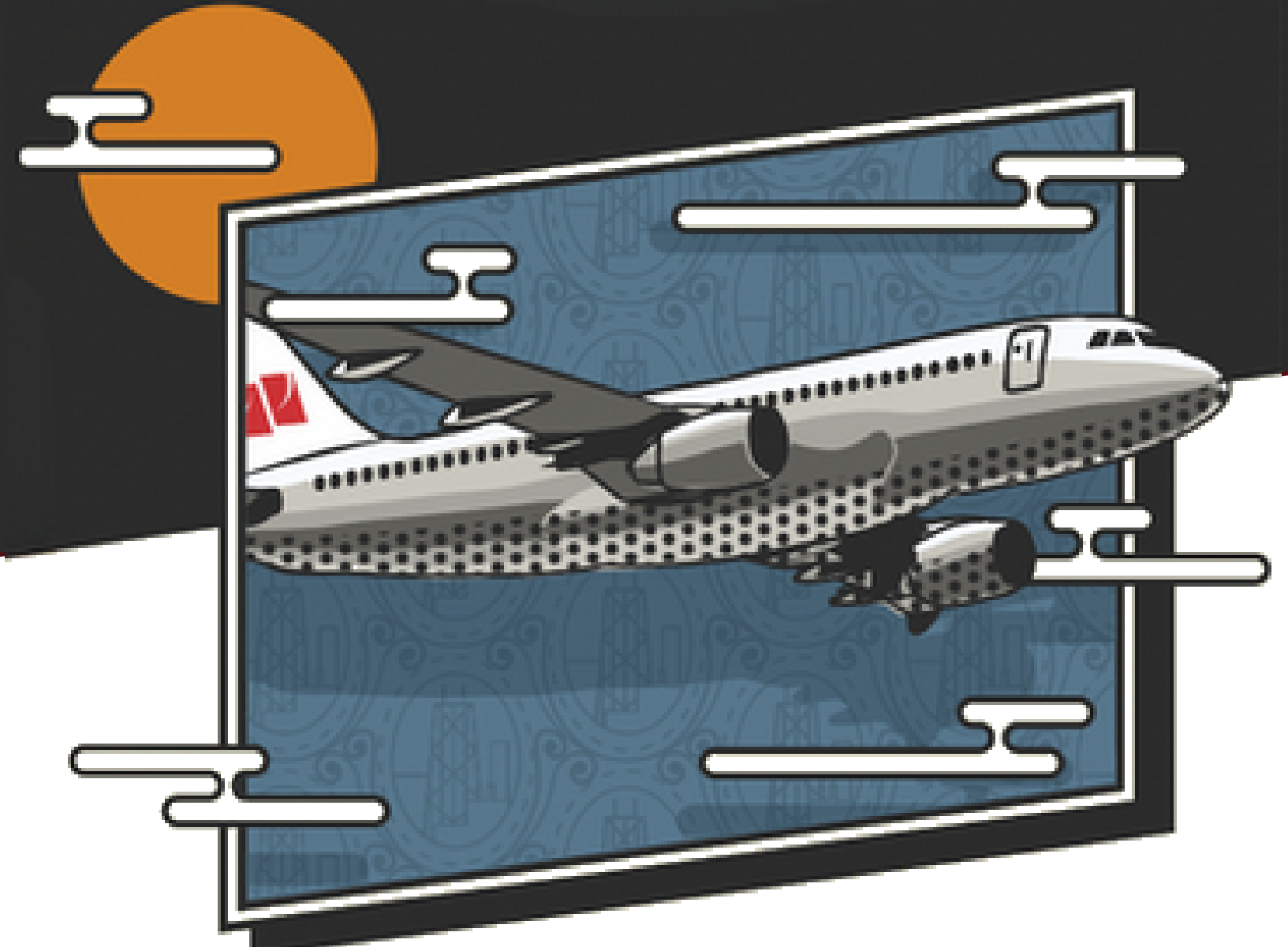


- Practical issues:
 - How long does forced accommodation last?
 - Define priorities in agreement or in sponsor's discretion
- These provisions will depend on --
 - Air service market
 - Physical constraints on facilities
 - Status as a hub airport
 - International facilities

Practice pointers

- Airlines do many negotiations every year – your team needs equivalent expertise
- Need to understand your unique leverage (or vulnerabilities)
- Airlines start from 'no' on large capital expenses
- Airport and airline needs often not aligned
 - Vary among airlines and airline business models
 - Need to understand their needs vs posturing
- A rushed negotiation will result in a bad deal

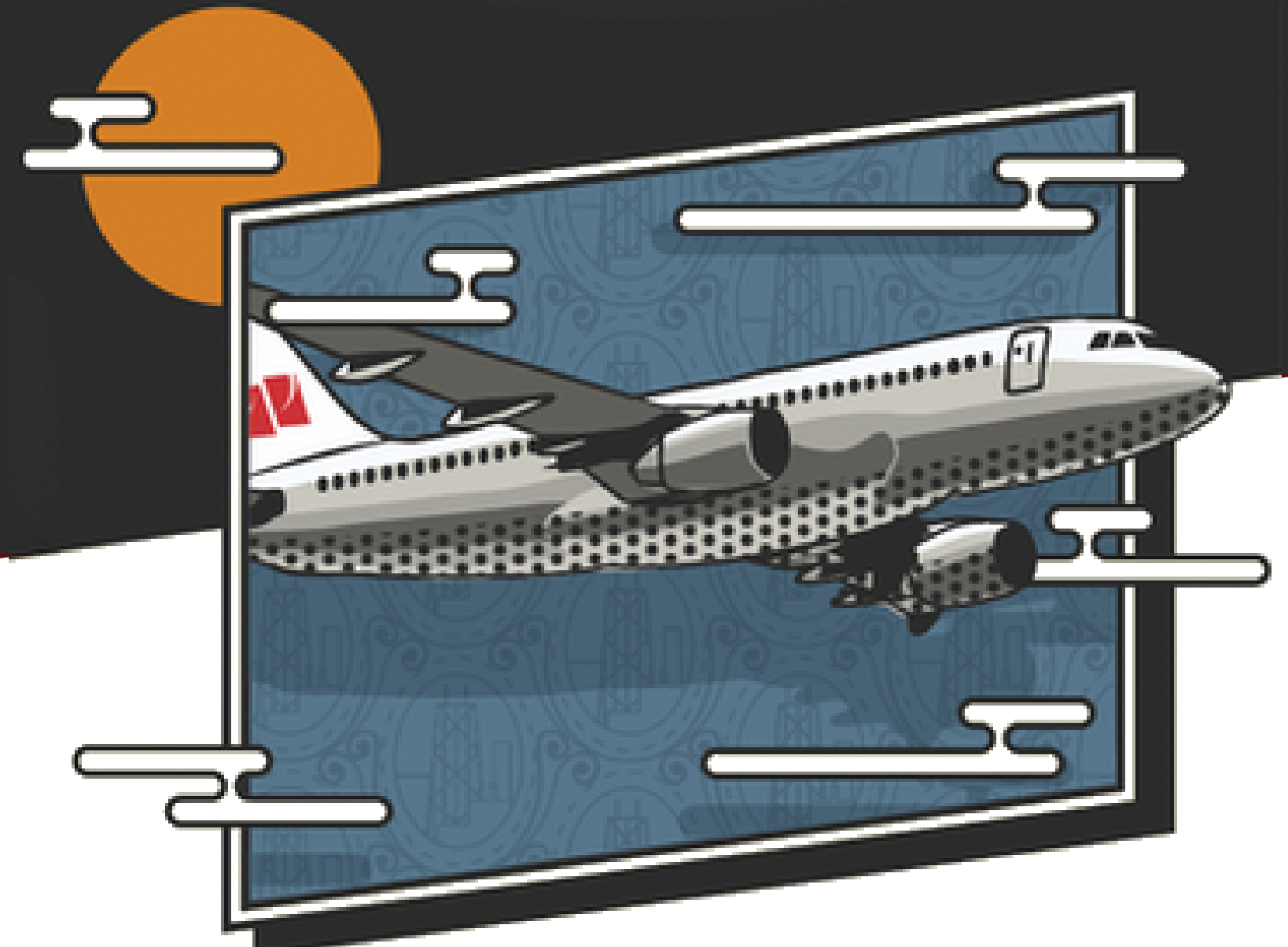
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QUESTIONS?



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THANK YOU!