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Prospects for Change in Europe's and the United States' Airline Ownership Rules

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Prospects for Change in Europe's and the United States' Airline Ownership Rules

Abstract

Since the first Bermuda agreement in 1946, the nationality clauses in most bilateral agreements have limited the airlines designated to provide services for more than 50 years. Pressures have been growing to ease the ownership rules contained in bilateral agreements, to allow airlines greater commercial freedom. The Third Package of liberalising measures implemented in 1993 by the European Union, aside from opening up cross-border and domestic markets, removed national ownership controls. By contrast, the United States Administration continues to pursue a restrictive stance on this issue ostensibly for national defence reasons.

This paper reviews the history of airline ownership regulation in bilateral Air Services Agreements and national laws, and discusses cases of cross-border merger and acquisition activity between airlines in Europe and the United States. It goes on to analyse US open skies policies and European prospects for extending the scope of application of Community legislation and advocates the Single European Aviation Market as one that provides a sensible basis for the development of a multilateral approach to transatlantic services.

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Summary

The main difference between the traditional bilateral approach/ US open skies and one involving a TCAA is that in the latter nationality clauses would be eliminated together with ownership restrictions and markets would be opened up while ensuring fair competition.

From the US's perspective, as they already have signed a significant number of open skies agreements, they are able to take advantage of a liberalised multiple bilateral situation. However, the open skies policy is synonymous with a free for all system which is dependent on the good behaviour of air carriers and only a partial opening up of the market.

From the European perspective, in order to liberalise the aviation market the first step is to reform the economic regulations in the two largest markets of the world. As for the US, there is no desire to join a TCAA and to share their biggest single market with EU carriers.

The process of liberalising air transport continues. It is inevitable that airlines should restructure to meet the change. Therefore, the bilateral world should be replaced by one involving multilateralism, with restrictions on foreign ownership loosened.

Introduction

The fast changing air transport environment of privatisation, liberalisation and globalisation is pushing airlines to seek structural adjustments in order to survive in the new millennium. Unlike other industries however, carriers usually cannot take-over or merge with airlines from other countries. They are constrained by the protectionist ownership rules contained in nearly all bilateral Air Services Agreements (ASAs). In order to operate international services under the terms of an ASA, airlines must be owned and managed by nationals of the designating country. In order to overcome the commercial disadvantages arising from these restrictions, carriers have developed various forms of collaboration. While these various ventures may have their advantages in terms of providing greater flexibility, they still have their limitations.

Therefore, it is important to realise the background of foreign ownership rules, the current limits in the world, the exceptions to the ownership rules and cases of shareholding in foreign airlines which have happened over the past decades. Following this, an analysis of the policies of governments and the strategies of airlines responding to the changing environment is made.

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The History of Ownership Regulation

The first inclusion of a nationality clause in a bilateral air services agreement was in one between Italy and Hungary in 1937, in which it was provided that each party could at any time scrutinise the conditions of nationality of the other party's airline[1]. Correspondingly, the arrangement relating to air transport services, which came into force between the Untied States and Canada in August 1939 also provided that the privileges accorded by that arrangement should be "available only to an air carrier enterprise bona fide owned and controlled by nationals of the respective parties". In 1944 the ownership and control issue was discussed by the US delegate at the Chicago conference. The US delegate said:

" We have two problems- the problem of ex-enemy or present enemy states or nationals, and the problem of knowing who we are dealing with at all times. Rights and permits are conceded by a country or countries to another country or countries as part of friendly relations and not for the purpose of being peddled. For example, we would not care to have a group of Germans go abroad and use ill-gotten gains to purchase aircraft and utilize rights we might have accorded to a friendly state to fly into the United States."[2]

At the Chicago Conference, American ideas on foreign ownership and control limitations were strongly opposed by those South American countries benefiting from TACA's (Transportes Aereos Centro-Americanos) services. TACA was PanAm's foremost competitor in the Latin American area, with 54 % of its shares owned by the New Zealander, Lowell Yerex. The argument of unfriendly foreign control however, was among those used to deny TACA landing rights for scheduled services to the US[3]. In the event, the Chicago delegates decided not to incorporate any provision on the nationality or ownership of airlines into the Convention itself, but instead to include such provision in the two subsidiary accords reached at the Conference, the Two Freedoms and Five Freedoms Agreements.[4]

"Each contracting State ***reserves the right*** *to withhold or revoke a certificate or permit to an air transport enterprise of another State in any case where it is not satisfied that substantial ownership and effective control are vested in nationals of*

[1] Wood, B. 'Foreign ownership of international airlines: a European view', International conference- the law, policy and commerce of international air transport and space activities, Taipei, 26-31 May 1991. p.312.
[2] Wood, B. 'Foreign ownership of international airlines'. p.313.
[3] Dr. Marc L.KJ. Dierikx, "Bermuda Bias: Substantial ownership and effective control 45 years on", Air Law, vol.XVI, no.3, 1991, p.120.
[4] HAVEL, Brian. In Search of Open Skies. The Hague, Kluwer Law International, 1997, p.63.

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a contracting State, or a case of failure of such air transport enterprise to comply with the laws of the State over which it operates, or to perform its obligations under this Agreement.[5]

Nowadays, a substantial national ownership clause is found not only in the Two Freedoms and Five Freedoms Agreements concluded at Chicago in 1944, but in most United Kingdom bilateral agreements. Its use enables the contracting States to bar flags of convenience from international air transport.[6]

According to Havel,[7] the 1944 Convention did not intend to veto *all* foreign investment in a national air carrier but to establish a two-pronged threshold involving quantitative (substantial ownership) and qualitative (effective control) elements.

National Laws in Some Countries

As mentioned above, there are important links between ASAs and the ownership of airlines. States regulate air carrier ownership at the international level primarily in terms of discretionary criteria for authorizing certain international air services. At the national level, regulation of air carrier ownership, in terms of the amount of foreign ownership permitted, can have implications both for discretionary criteria and for other aspects of international air transport[8].

The ***discretionary criteria*** for authorizing certain international air services based on airline ownership *involve a two-fold test to determine*:

1) *who has substantial ownership; and*
2) *who exercises effective control.*

States usually consider that more than 50 per cent of the equity in an air carrier constitutes "substantial ownership". States with a national law or regulation that specifies the percentage of equity in a national air carrier that may be held by non-nationals have considered that ownership in excess of this specified limit is "substantial".
Table 1 lists the ownership and effective control regulations that applies in the APEC Economies. By comparison, airline ownership rules of the United States and Canada are

[5] "Two Freedoms Agreement" Article 1 §5, Chicago 7 December 1944 and "Five Freedoms Agreement" Article 1 §6, Chicago 7 December 1944.
[6] Bin Cheng, *The Law of International Air Transport*, London, 1962, p.375.
[7] HAVEL, Brian. *In Search of Open Skies*. The Hague, Kluwer Law International, 1997, p.63.
[8] ICAO, Manual on the regulation of international air transport, Doc 9626, First edition, 1996.

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particularly restrictive, with each having a 25% limit on foreign equity. Chile is an exception among these cases, it only requires the principal place of business criterion.

Defining "effective control" has generally been more difficult. Therefore, most States rely on a case-by-case approach, using the applicable national laws and regulations concerning corporate responsibility for decision making; or special laws, regulations and policies specifically related to determining who exercises control of air carriers, or a combination of the two.

With worldwide trends towards liberalisation, pressures have been growing to ease the ownership rules contained in bilateral agreements and national laws, to allow airlines greater commercial freedom. Australia is the first country in the world to allow foreigners to set up airlines to operate domestic air services. In addition to abolishing the foreign ownership limit on domestic carriers, the Australian cabinet also raised the limit on shareholdings by foreigners in its international air service providers from 35% to 49%. It was considered that by raising the foreigner ownership limit these would be less hindrance to airlines wishing to operate international services to Australia and that it would enhance the opportunities for Australian airlines to operate international services elsewhere[9]. Table 2 provides a summary of recent changes in Australia's ownership rules. The lifting of the foreign ownership cap was particularly significant in the creation of low-fare carrier Virgin Blue, a subsidiary of the Virgin Group. At the same time, another low-fare carrier Impulse Airlines was set up by Australian Citizens. These two low-fare carriers will challenge the duopoly of Qantas Airways and Ansett Australia. It is the first serious test in eight years for the incumbents[10].

Aside from Australia, the Malaysian Government has recently given permission for the foreign shareholding limit in Malaysian Airlines to be increased from 30% to 45%, easing the way for a foreign carrier to take a strategic stake in the company[11]. Chinese regulatory authorities also are considering a proposal to raise the ceiling on foreign investment in the country's airlines to 49% from the current 35%, in a move designed to draw more cash to the industry[12].

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[9] Productivity Commission (1998), *International Air Service Inquiry*, Australia.
[10] David Knibb, *'Australian test match'*, Airline Business, August 2000.
[11] ATI news, *'MAS wins Government nod to boost foreign equity'*, 27 July 2000.
[12] ATI news, *'China studies easing of airline foreign ownership cap'*, 2 June 2000.

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Table 1 Summary of Countries' Policies and Practices on Airline ownership and Control of Designated Carriers in APEC Economies

Country	Ownership Limit (%)	Summary of Ownership and Control Policies
Canada	25	The holder of a scheduled international air services licence issued by Canada must be a Canadian citizen or permanent resident, a government in Canada or an agent of such government, or a corporation or other entity incorporated or formed under Canadian law with 75% voting interests owned or controlled by Canadians.
China	35	Up to 35% of foreign airline investment in Chinese national carriers is permitted. The Chairman of the board of directors and executive managing director or president must be Chinese nationals.
Chile	-	Designation as Chilean carriers (domestic or international) only requires the principal place of business criterion.
Indonesia	-	Requires airlines designated under bilateral agreements to be substantially owned and effectively controlled by the other Party.
Japan	1/3	Japanese carriers wishing to be designated to operate domestic and international air services can not have the following: • Any person who does not have Japanese nationality; • Any foreign state or public entity or its equivalent in any foreign state; • Any juridical person or body established in accordance with the laws and ordinances of any foreign state; or • Any juridical person of which the representative is any one of those mentioned in the preceding three items or of which more than 1/3 of the officers are such persons or more than 1/3 of voting interests are held by such persons.
Korea	50	The licencing of scheduled air services for Korean carriers is revoked when foreign equity investment is 50% or above. Foreign equity investment in scheduled and non-scheduled air transportation business cannot exceed 50%.
Malaysia	45	Airlines designated to use Malaysia's traffic rights under bilateral air services agreements must be substantially owned and effectively controlled by Malaysian interests.
New Zealand	49	New Zealand airlines wishing to be designated under bilateral agreements may be owned up to 49% by non-New Zealand nationals, with 25% being the maximum shareholding by a foreign airline or airline interests, and 35% being the maximum aggregated shareholding by foreign airlines or airline interest.
Philippines	-	Requires the substantial ownership and effective control of a designated airline to be vested in the Party designating the airline or its nationals or both.
Singapore	27.51	Requires airlines wishing to be designated under Singapore's air services agreements to be substantially owned and effectively controlled by Singapore interests.
Taiwan	1/3	Designated carriers of Taiwan should be air carriers incorporated in Taiwan such that the equity holding by foreigners may not exceed one-third, and the number of foreigners as directors may not exceed one-third of the Board.
Thailand	30	For the Thai air operator, Thailand requires that at least 70% of its shares be vested in the hands of Thai nationals, with criteria on substantial ownership and effective control being required as appropriate.
United States	25	Only "citizens of the United States" may operate aircraft in domestic air services and may provide international scheduled and non-scheduled air services as US air carriers The US Department of Transportation makes the citizenship determination on a case-by-case basis, with some guidelines.

Source: compiled from Secretariat's Paper, Annex 1, APEC Air Service Group Meeting, 25-26 February 1998, Singapore. (Malaysia's limit was revised from 30% to 45%)

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Table 2 Foreign Investment Requirements for Australian Carriers

Limits on Equity	Qantas	Other Australian International Carriers	Australian Domestic Carriers
Aggregate equity held by all foreign persons	49 per cent	Demonstrated substantial ownership and effective control by Australian nationals	100 per cent (unless judged contrary to the national interest)
Aggregate equity held by foreign airlines only	35 per cent	35 per cent	40 per cent*
Equity held by a single foreign person/airline	25 per cent	25 per cent	Generally up to 25 per cent for foreign airlines flying to Australia*

*The Commonwealth Government is prepared to consider foreign equity proposals in excess of these guidelines if the proposal is not contrary to the national interest.

Source: 1.Productivity Commission, International Air Services, Inquiry Report, No.2, 11 September 1998.
2. ATI news, 'Australian parliament okays new airline ownership laws', 12 April 2000.

Current Limits in the EU and US

In the European Union, the granting and maintenance of operating licences by Member States in relation to air carriers established in the Community is governed by Council Regulation 2407/92 of 23 July 1992. This Regulation limits the extent of inward investment in EU carriers by non-EU Member States and/or non-EU companies and nationals by prescribing conditions on ownership and control for the granting of an operating licence to a carrier. According to Goh, J.[13], it was the Commission's intention to safeguard the interests of the air transport industry within the Community. Its objective was to ensure that carriers from non-Community countries would not be allowed to take advantage of the common air transport market by way of participation in the ownership and control of Community carriers. The view of the Commission was that majority ownership would be established if at least 50 per cent plus one share of the capital of the carrier in question was owned by Member States or nationals of Member States.

In the U.S., current restrictions on airline ownership and control have their origins in the Air Commerce Act of 1926 Act (the "1926 Act")[14], which was Congress's first national policy enactment with respect to aviation. The 1926 Act defined a citizen of the Untied States as an individual who is a United States citizen, or a corporation which meets two criteria[15]. A 1934 amendment to the 1926 Act relaxed citizenship requirements with respect to aircraft registration. The Civil Aeronautics Act of 1938 however, excluded the

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[13] Jeffrey Goh, *European Air Transport Law and Competition*, John Wiley & Sons Ltd, 1997, p.114.
[14] John T. Stewart, JR., 'United States citizenship requirements of the Federal Aviation Act- A misty moor of legalisms or the rampart of protectionism?', *Journal of Air Law and Commerce*, 55, 1990, 689-670.
[15] Firstly, the president and two-thirds or more of the board of directors or other managing officers are individuals who are citizens of the Untied States. Secondly, at least 51 per centum of the voting interest is controlled by persons who are citizens of the Untied States.

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limited liberalized alien registration provision of the 1934 amendment. Act of 1938 also contained a more restrictive percentage of voting stock ownership of seventy-five percent. The Federal Aviation Act of 1958 reenacted the provision regarding registration, as well as retaining the citizenship definition contained in the 1938 Act[16]. Since then, the US government has relied on several different portions of the Federal Aviation Act of 1958 and additional economic regulations to guide their foreign investment policy. Section 401 of the Act dictates the rules governing airline certification. The first sentence of the certification rules is as follows[17]:

> *"(a) No air carrier shall engage in any air transportation unless there is in force a certificate issued by the Board authorizing such air carrier to engage in such transportation."*

Such a sentence would mean that the investor had skipped the all-important "definition" section of the Act, Section 101. For the details of Section 101, please refer to Table 3.

In addition to US citizenship, there is a second major test for the takeover of a U.S. airline. Section 408 deals with consolidation, mergers and acquisitions of U.S. aeronautical entities by anyone, including foreigners.

Definition control: Section 408(a)(4)

> *"(it is prohibited)...for any foreign air carrier or person controlling a foreign air carrier to acquire control, in any manner whatsoever, of any citizen (read airline) of the United States engaged in any phase of aeronautics."*

"Control" is not included in the definitions section of the statute. But Section 408(f) sets 10% as the level at which control is presumed and is therefore subject to governmental review and prior approval.

> *"...Any person owning beneficially 10 per centum or more of the voting securities or capital, as the case may be, of an air carrier shall be presumed to be in control of such air carrier unless the Board finds otherwise."*

In practical terms, the 10%, prior-approval barrier in Section 408 applies only to foreign airlines or persons controlling foreign airlines. The 1978 deregulation law eliminated the need for persons outside aeronautics to gain prior approval for a 10% investment. That covers foreigners as well[18].

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[16] Ibid, 696-697.
[17] Joan, M.Feldman, " What are the chances of foreign ownership of U.S. Airlines?", Air Transport World, November 1987,p.47.
[18] Ibid, p.48.

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Table 3 Airline Ownership Rules of the EU and US

EU	US
Council Regulation 2407/92 of 23 July 1992 Article 4(1) of the Licensing Regulation states the conditions that an operating licence can be granted: *"1 – No undertaking shall be granted an operating licence by a Member State unless:* *(c)* ***its principal place of business*** *and, if any, its registered office are located in that Member State; and* *b) its main occupation is air transport in isolation or combined with another commercial operation of aircraft or repair and maintenance of aircraft."* Article 4(2) of the Licensing Regulation requires any air carrier that wishes to be licensed by an EU Member State is majority owned and effectively controlled by Member States and/or EU nationals. *"2- Without prejudice to agreements and conventions to which the Community is a contracting party, the undertaking shall be* ***owned and continue to be owned directly or through majority ownership by Member States and/or nationals of Member States. It shall at all times be effectively controlled by such States or such nationals****."*	**Federal Aviation Act of 1958** Definition of the term "air carrier" in Section 101(3) is the first limiting factor: *"...****any citizen*** *of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage in air transportation."* Completing the definitional chain, there is a declaration of "citizen" in Section 101(13): *"(a) an individual who is a citizen of the United states or of one of its possessions, or* *(b) a partnership of which each member is such an individual, or* *(c) a corporation or association created or organized under the laws of the United States, of which the president and two-thirds or more of the board of directors and other managing officers thereof are such individuals and in* ***which at least 75 per centum of the voting interest is owned or controlled by persons who are citizens of the United States*** *or of one of its possessions"*

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Ownership rule Exceptions

As mentioned above, states generally retain the right in national laws and air services agreements to withhold, revoke or impose conditions upon the operating permission that an air carrier needs in order to operate the agreed commercial air services if the carrier is not 'substantially owned and effectively controlled' by the designating State or its nationals. But there are still some important exceptions to these criteria, notably in provisions relating to air carriers created by intergovernmental agreement, such as Air Afrique in francophone West Africa, Gulf Air in the Middle East, LIAT in the Carribbean, and SAS in Scandinavia.

Air Afrique was founded in 1961, with the majority of the airline jointly owned by 11 former French colonies, namely Benin, Burkina Faso, Central African Republic, Chad, Congo, Ivory Coast, Malim Maritius, Niger, Senegal and Togo. Gulf Air is the national carrier of the Gulf States of Bahrain, Oman, Qatar and the United Arab Emirates. LIAT was established in 1974, and was owned until November 1995 by 11 Carribbean governments (Antigua Barbuda, St Kitts/Nevis, Dominica, St Lucia, St Vincent and the Grenadines, Montserrat, Grenada, Barbados, Trinidad and Tobago, Guyana and Jamaica). SAS is jointly owned by the Swedish, Norwegian and Danish governments and private investors. However, the issue of effective control cannot be resolved purely in terms of a particular ownership share. When SAS was bidding for 24.9 per cent of British Caledonian (B.Cal) in 1988, then UK Secretary of State for Transport deemed that the financial arrangements being proposed to save B.Cal gave SAS 'effective control' even with less than 25 per cent shareholding[19]. As a result, B.Cal could no longer be designated as UK carrier and the SAS bid collapsed.

Besides multinational ownership, the ICAO Assembly has accepted the 'Community of Interest' concept which urges Contracting States to accept the designation by one developing State of an airline substantially owned and effectively controlled by another State within the same regional economic grouping[20] (e.g., USA, Canada and Germany allow Barbados to designate BWIA even though it is substantially owned by the Trinidad and Tobago government).

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[19] Doganis, Rigas (1996), 'Relaxing airline ownership and investment rules', *Air & Space Law*, V. XXI, No.6, p.268.
[20] *Ibid*, p.267.

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Furthermore, both Britannia and Monarch, large charter airlines, whose beneficial ownership ultimately resides in Canada and Switzerland respectively, have long been accepted as UK-designated airlines by other States. Finally, Cathay Pacific is not substantially owned and effectively controlled by Hong Kong interests.

Equity Stakes in Foreign Airlines

Following the fast changing environment of privatisation, liberalisation and globalisation, some airlines have been able to build up sizeable stakes in foreign carriers (Table 4). SAS was able to increase its stake in British Midland, from 25 percent in 1988 to 40 percent in 1994 since declined to 20 percent as a result of selling half its shareholding to Lufthansa. KLM was permitted to increase its stake in Air UK, now known as KLM uk, from the original 14.9 per cent stake taken in 1987 to 100 per cent ownership in 1997[21]. And British Airways and American Airlines have purchased equity stakes in Iberia following its privatisation (BA purchased 9 per cent of the shares and AA 1 per cent).

EU major airlines cross border equity stakes

In the EU, any Community Citizen can establish a carrier in any EU country following the Third Package. As a result, cases of cross-border merger and acquisition between airlines have increased in Europe.

British Airways has been keen to acquire airlines in other EU countries. Firstly, it purchased a 49% shareholding in 1992 in Delta Air in Germany (later renamed Deutsche BA), and increased its shareholding to 100% in 1997. Secondly, BA acquired a 49.9% shareholding in TAT (France), and increased its shareholding to 100% in 1996. BA also invested FFr 630 million in Air Liberte the same year. In 1998, TAT was absorbed into Air Liberte and became the second largest carrier in France. However, an equity stake is not a riskless investment. DBA and Air Liberte have not performed well since being owned by BA, as a result of the strong competition they have faced from Lufthansa and Air France in the respective German and French domestic markets. After a few years, DBA was forced to review its network and cut some international routes, only achieving its first break-even in 1999. But as for Air Liberte, BA decided to sell it earlier this year.

[21] Pat Hanlon, Global Airlines, Second Edition, Butterworth Heinemann, 1999, p.233.

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Unlike BA, Lufthansa has not applied Council Regulation (EEC) No 2407/92 to acquire more than 50% shareholdings in airlines in other EU countries. It has acquired stakes in Air Dolomiti in Italy, Lauda Air in Austria, Luxair in Luxemburg and British Midland in the UK, but all involve less than 30% of the equity.

Swissair has been very keen to acquire shareholdings in EU carriers. Since 1998, it has bought 45% of Air Europe and 34% of Volare in Italy, 44% of Air Littoral, 51% of AOM French Airlines and 49% of Air Liberte in France; and 20% of TAP Air Portugal and 42% of Portugalia in Portugal.

SAirGroup also reached agreement in principle on 26 April this year with the Belgian Government to increase its holding in Sabena from the current 49.5% to 85%, with Belgium in turn taking a 3.3% equity share in the SAirGroup. On 21 May, the Swiss electorate gave their approval for the bilateral agreement with the EU. Swissair and Crossair eventually will be able to operate like EU carriers in terms of traffic rights and ownership restrictions. This is of great significance, as it will be the first time that one of Europe's flag carriers falls into majority foreign ownership, assuming that the deal is finalised. The implications for the bilateral agreements that Belgium has with third countries will be particularly interesting to observe, as the carrier designated to operate services by the Belgian Government would for the first time not be substantially owned and effectively controlled by nationals.

Cross-border equity stakes between the EU and US

KLM/ Northwest case

In 1989, the US DOT's initial post-408 precedent was set in the framework of the leveraged buy out of Northwest Airlines by a group of investors led by the American financier Alfred Checchi[22]. In that transaction, which involved $3.65 billion, KLM received only 5% of the voting stock of Northwest, and although additional debt obligations raised its voting shares, these were unquestionably well under the 25% limit. In addition, KLM gained the right to name one of the twelve members of Northwest's Board and to appoint a special three-person committee to advice on the general management of Northwest's financial affairs.

[22] Paul V. Mifsud, 'The KLM/Northwest airlines case and general principles applicable to all investments and cooperative arrangements between U.S. air carriers and foreigners', *Air Law*, V. XV, N.1, 1990, p.42-43.

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However, KLM's participation represented 56.74 percent of Northwest's equity capital. A large equity stake alone would not have voided Northwest's citizenship under the numerical test in the Federal Aviation Act, because the bulk of KLM's interest was in non voting stock[23]. The DOT responded to the proposal with a Consent Order on September 29, 1989, which required modifications and a reduction in the amount of equity ownership. Subsequently, KLM and Northwest filed a petition with the DOT on January 15, 1991, requesting four amendments[24]. However, the subjectivity of the DOT's effective control test was influenced by an entirely new factor, the aeropolitics of bilateral open skies discussions between Washington and The Hague. In the simultaneous context of a dramatic worsening of US airline finances, this pathbreaking event rebounded strongly to KLM's benefit. Ultimately, the DOT surprised the industry and granted the request to allow KLM to increase its Northwest equity to 49%, and to appoint three members to the Board of Directors. Following the signing of the new open skies accord, the DOT granted approval and antitrust immunity for the Co-operation and Integration Agreement between Northwest and KLM, pursuant to Sections 412 and 414 of the Federal Aviation Act on the 11th of January 1993[25]. In terms of this agreement, the applicants intended to operate all their services as if the two carriers were one.

However, this cross-border merger case did not last long. Aside from the fact that in US law there are limitations to the voting rights that foreign companies can have in US airlines, Northwest worried that KLM would seek to take full control of it. Therefore, although KLM invested another $50 million in Northwest in 1992, their intention to increase their voting rights from 19 per cent to 25 per cent was not realised[26].

As a consequence, after a long dispute over foreign ownership of voting stock involving the DOT and Northwest, KLM agreed to sell its 19% holding of voting stock back to Northwest in 1997 but retained their long-term commercial and operational strategic alliance with Northwest.

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[23] HAVEL, Brian. *In Search of Open Skies*. The Hague, Kluwer Law International, 1997, p.70.
[24] Edwards, Angela (1995), 'Foreign investment in the U.S. airline industry: friend or foe?', *Emory International Law Review*, Vo.19, No.2, 610.
[25] McALISTER, B. (1999), *The Legal implications of competition and antitrust legislation on airline mergers and alliances*, Msc thesis, Cranfield University.
[26] *Airline Business*, August 1996, p.33.

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Table 4 Equity Stakes in Foreign Airlines

Held by	Held in	Percentage of share capital	Year first acquired
Aer Lingus	Futura International	85	1989
Air France	Air Afrique	12.17	1961
	Air Caledonie	2.089	1968
	Air Gabon	20	1977
	Air Madagascar	3.48	1963
	Air Mauritius	2.78	1967
	Austrian	1.5	1989
	Cameroun Airlines	3.57	1971
	Middle East Airlines	0.9	1949
	Tunisair	5.6	1948
	CityJet	100	2000
	Air Austral	35.984	1990
	Royal Air Maroc	3.974	1947
American	Aerolineas Argentinas	8.5	1997
	Iberia	1	1998
Austrian	Ukraine International	19.7	1996
British Airways	Deutsche BA	100	1992
	Quantas	25	1993
	Iberia	9	1999
Delta	Swissair	4.6	1989
	Proteus Airlines	34	1997
Iberia	Aerolineas Argentinas	10	1990
	Royal Air Maroc	1.3	-
	Savia Airline (Russia)	66	-
KLM	Braathens	30	1997
	Kenya Airways	26	1996
	KLM uk	100	1987
Lufthansa	British Midland	20	1999
	Air Dolomiti	26	1999
	Lauda Air	20	1993
	Luxair	13	1992
SAS	Air Botnia	100	1998
	British Midland	20	1988[1]
	Spanair	49	1986
SAirGroup	Austrian	10	1989
	Delta Air Lines	4.6	1989
	Air Liberte	49	2000
	Air Europe	45	1998
	Air Littoral	49	1998
	Sabena	85	1995
	AOM French Airlines	49	1999
	LTU International	49.9	1998
	Portugalia	42	1999
	TAP Air Portugal	34	1999
	LOT Polish Airlines	37.6	1999
	South Africa Airways	20	1999
	Volare Airlines Spa	34	1998
	Ukraine International	5.6	1996

Source: 1. Pat Hanlon, Global Airlines, Second Edition, Butterworth Heinemann, 1999.
2. Y-C Chang and George Williams, 'Ownership rules in the airline industry-the case of the European Union', ATRG conference, Amsterdam, 2-5 July 2000.
3. www.rati.com, 2 Aug. 2000.

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Open Skies Policies

In the period 1978-1985, the United States re-negotiated many of its key bilateral agreements, significantly reducing regulatory controls. The Netherlands was the first country to sign a liberalised bilateral ASA with the US in 1978. The characteristics of US type ASAs are the elimination of restrictions on capacity, frequency and route operating rights; the creation of new and greater opportunities for innovative and competitive pricing; and the flexibility for multiple designation[27].

In 1992, a more liberalised policy 'open skies' was announced by the Clinton Government, involving unlimited 5th freedom rights and unregulated fares. The United States succeeded in negotiating the first Open Skies Agreement with the Netherlands in October 1992. The U.S established a series of open-skies bilaterals in 1995, beginning with Switzerland, followed by Sweden, Norway and Luxembourg. By May 2000, Open Skies Agreements had been established with 45 countries around the world (Table 5).

Comparing the U.S. style open skies agreement with the EU multilateral agreement (Table 6), both contain unrestricted designation, capacity and fares[28]. The first difference is that there are no national ownership and effective control restrictions for designated airlines in EU countries, while the US still puts a strict limit on them. The second difference is that full access to international and domestic routes is allowed within the EU (including all eight freedoms of the air), while 7th and 8th freedom rights are not permitted in US open skies agreements.

In Europe's three largest countries, only Germany has signed an open skies agreement with the U.S.. While France liberalised its bilateral with the US in 1998, it fell short of being a full open skies agreement. As for the UK, attempts to reach a more liberal version of Bermuda II continue. Germany's more liberal approach was very much linked to the desires of United and Lufthansa for their alliance to be granted immunity, given the US DOT's consistent policy to grant anti-trust immunity subject to the conclusion of an open skies agreement with the relevant third country.

As for the European Commission, it still has no mandate to negotiate EU route rights with third countries. It has consistently argued that the Open Skies Agreements

[27] Y-C Chang and George Williams, 'Ownership rules in the airline industry-the case of the European Union', ATRG conference, Amsterdam, 2-5 July 2000.

[28] EU only set principles against abnormal development.

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between the US and individual Member States has resulted in a fragmentation of the common aviation market and therefore infringes EU law.

As a result, it has mounted a two-pronged challenge to the Open Skies Agreements[29]. Firstly, the Commission intends to use the alliance investigations to extend the scope of the existing Open Skies Agreements concluded between the relevant EU Member States and the US. Secondly, the Commission has challenged the legality of the existing Open Skies Agreements referring the matter to the European Court of Justice. The Commission's main argument is that in order to ensure that the common aviation market functions properly, it is necessary that the Community as a whole concludes with the US an air services agreement.

On the other hand, from the US's perspective, with a significant number of liberalised bilaterals, each of which permits unlimited fifth freedom operations and third country code-sharing operations, then in a sense they are enough to be able to take advantage of essentially a multiple bilateral situation. And it is one of the important reasons that the US government still gives a red right to changes in the ownership rules.

Table 5 Countries with US signed Open Skies Agreements

Europe	Central and South America	Asia-Pacific	Middle East	Africa
• Netherlands	• Panama	• Singapore	• Jordan	• Tanzania
• Austria	• Costa Rica	• Brunei	• Pakistan	• Dominican Republic
• Belgium	• El Salvador	• Taiwan	• United Arab Emirates	• Ghana
• Denmark	• Guatemala	• New Zealand	• Bahrain	• Namibia
• Finland	• Honduras	• Malaysia	• Qatar	• Gambia
• Iceland	• Nicaragua	• South Korea		• Burkina Faso
• Luxembourg	• Chile			
• Norway	• Netherlands Antilles			
• Sweden	• Peru			
• Switzerland	• Argentina			
• Czech Republic	• Aruba			
• Germany				
• Romania				
• Italy				
• Portugal				
• Slovakia				
• Turkey				
17	11	6	5	6

Source: compiled by authors.

[29] Trevor Soames, EU Policy and programme, *UK air transport policy in the context of Europe conference*. 1 June 2000. London.

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Table 6 Comparison of the Traditional Bilateral Approach with Multilateralism

	Traditional Bilateral	Multilateralism (Third Package)	*Open Skies Agreement*
Designation	• Single • Double • Multiple	Unrestricted	Unrestricted
Ownership and Effective control	Strict National Ownership and Effective control restrictions	There are no National Ownership and Effective control restrictions in EU countries	Strict National Ownership and Effective control restrictions
Capacity	**Controlled** • Frequency • Aircraft type • Seats	Unrestricted	Unrestricted
Market Access	Specified 3rd and 4th Freedoms, and limited 5th Freedoms	• Full access to international and domestic routes within the EU • Unrestricted cabotage. Reformed public service obligations and some protection for new thin regional routes. • More scope for traffic distribution rules and restrictions related to congestion and environmental protection	• Access to all points in each country • Full 5th Freedom rights • No 7th and 8th Freedom rights
Fares	• Both Governments Approval (Double approval) required • (IATA)	Provision made for the State and/or the Commission to intervene against • Excessive basic fares (in relation to long term fully allocated costs) • Sustained downward development of fares	Unrestricted

Source: compiled by authors.

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Airline Alliances

There are four reasons for airlines forming transnational alliances. Firstly, to gain the marketing benefits arising from large size and network spread. Secondly, to reduce costs. Thirdly, to reduce competition on duopolistic routes. And lastly, to circumvent nationality rules in bilateral air services agreements. The last one is the most critical factor pushing airlines into developing alliance strategies[30].

In today's airline industry, airline alliances have already set globalisation in motion. There are a staggering 579 bilateral partnerships in force among more than 220 mainline airlines[31]. The emergence of global alliances has added another strand to the debate. The Star Alliance accounts for around 20% of the world's passenger market (Table 7). Closest competition still comes from oneworld, although it has reduced its share of around 16% following the Canadian's departure.

For the US, in order to achieve open skies agreements with other countries, the DOT has offered antitrust immunity to some international alliances involving US carriers. The US DOT thinks alliances are:[32]

a). stimulating demand,
b). leading to pro-competitive changes in industry structure; and
c). providing consumers the benefits of substantially lower prices.

In contrast, the European Commission's position is reserved towards alliances. In setting out its competition assessment of the Lufthansa/SAS/United and British Airways/American Airlines alliances, it asked them to reduce frequencies on their hub to hub routes.

Table 7 Global alliance groupings June 2000

	Passenger traffic		Pax numbers		Group revenues		Destinations	Fleet
	RPK bn	share	$million	share	$billion	Share		
Star Alliance	594	21.3%	293	18.8%	69.6	20.9%	800	2,023
Oneworld	456	16.4%	199	12.8%	50.0	15.0%	559	1,852
AF/Delta	265	9.5%	151	9.7%	26.1	7.8%	454	883
NW/KLM	177	6.4%	72	4.6%	16.8	5.0%	-	487
Qualiflyer	100	3.6%	52	3.3%	16.1	4.8%	332	469
Total alliances	1,592	57%	766	49.1%	178.6	53.7%	-	5,714

Source: Airline Business, July 2000, p.48.

[30] Doganis, Rigas (1998), 'Air transport in an era of globalised markets', International conference –air transport and airports, Athens, 3-4 Dec.
[31] Kevin O'Toole, 'Motivated mergers', *Airline Business*, July 2000, p.46.
[32] Trevor Soames, EU Policy and programme, *UK air transport policy in the context of Europe conference*. 1 June 2000. London.

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TCAA (Transatlantic Common Aviation Area)

In September 1999, the AEA (Association of European Airlines) presented its new policy statement on a 'Transatlantic Common Aviation Area'. The overall objective is to reform regulation in the two largest air transport markets, the US and EU, by replacing the current fragmented regulatory regime with one that will allow the airlines in these two regions to have the freedom to adapt their structure and operations to the pace of change. The essential core features of the TCAA are summarised in Table 8.

The TCAA idea was presented in the 'Beyond open skies conference' in Chicago in December 1999. The idea has strong support in Europe, from both industry and certain governments. For example, the Netherlands Minister of Transport, Tineke Netelenbos, pointed out that 'outdated ownership and control restrictions will hamper growth. The EU and the USA should reach an agreement on a framework to establish a transatlantic agreement as soon as possible'.[33] Germany's Minister of Transport agreed. 'The aviation industry has rushed ahead of its ruling authorities. Global alliances show the limits of the bilateral system.' The idea was also supported by Federico Bloch, president of TACA, who said 'There is no question that we are moving toward regional and multilateral agreements. Our alliances will shape up as more than alliances; they will become fully integrated. Like it or not, we need to remove ownership barriers.'

Different points of view however, were raised at the 9th annual international aviation symposium held in Phoenix in May 2000. Bradley Mims, acting assistant Transportation secretary for aviation and international affairs, said that the 'AEA proposal is not desirable, but offers enough common ground to start discussions'. Michael Whitaker, vice president for international and regulatory affairs at United, said that the AEA paper was a wrong approach as it reflected "European regulatory thinking". David Mishkin, vice president for international and regulatory affairs at Northwest Airlines, was concerned that a nucleus of strong open skies agreements would be needed before the world's two most important aviation markets could be made into one and that the prospect of over-regulation being transferred from Europe into a common aviation market had contributed to American carriers' reluctance to join the TCAA bandwagon.

Many see stable alliances as a prerequisite for a common market. But the airline groupings are further than ever from such stability, especially in Europe where the alliance

[33] Karen Walker, ' Sans frontiers?', *Airline Business*, February 2000, p.34-35.

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Table 8 Essential core features of a TCAA agreement

Core features	Objective	Key areas
The freedom to provide services	All airlines of the parties to the TCAA will have unrestricted commercial opportunities to conduct the business of air transport anywhere within the TCAA.	• The freedom for each airline to determine the routes to be operated, the markets to be served and the capacity to be provided should go hand in hand with the abolition of any pricing controls and of any form of discrimination between airlines from TCAA countries. • A fundamental distinction must be made between air transport within the TCAA and to/from third countries. • The objective of freedom for airlines to provide services within the TCAA cannot be achieved from the outset.
Airline ownership and the right of establishment	Permit cross-border mergers, acquisitions and new entry within the Common Aviation Area.	The basic choice for harmonised rules on this subject within the TCAA is between: 1. Allowing airlines to enter the market and conduct air transport within the TCAA, provided they are majority owned/ controlled by nationals of the parties or their respective governments; 2. Allowing airlines to enter the market and conduct air transport within the TCAA, provided they are incorporated and have their principal place of business in the territory of a TCAA country.
Competition policy	Replacing traditional government regulation of market entry, access and pricing. The parameters used and the procedures followed to determine anti-competitive behaviour.	• Industry restructuring arrangements, such as strategic alliances, with the object of creating TCAA airlines capable of competing in the world markets should be regarded *prima facie* as satisfying the basic EU and US exemption/anti-trust criteria of contributing to the promotion of economic progress, to the interests of consumers, and thus to the public interest; • Code-sharing, block space, franchising and similar co-operative agreements, as well as tariff consultations for interline purposes, should in principle be allowed as indispensable tools in the operation of competing airline networks.
Leasing of aircraft	Harmonise policy on leasing to the highest possible degree that concerns economic as well as safety considerations.	• Permit TCAA-based airlines freely to lease aircraft from (and to) either other TCAA-based or third country airlines, also on a wet-lease basis, subject to essential safety requirements. • Safety should be the only legitimate concern with respect to the use of leased aircraft by TCAA-based airlines for operations within the TCAA.

Source: compiled from AEA policy statement, September 1999.

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picture could shift quickly[34]. The proposed KLM/Alitalia alliance provides a good example of this. Alitalia is calling for international arbitration over its split with KLM, confirming its determination to seek damages from the Dutch carrier for what it describes as an "illegal cancellation" of its alliance contract earlier this year[35]. Since then, KLM and BA have announced that they are exploring the possibility of a merger.

The Airline Industry in the US and EU

The supply of air transport services is heavily concentrated in the hands of major airlines. Around 70% of revenues are generated by the top 25 airlines (Table 9), and nearly 85% by the top 50. Among these, the top three are US carriers, with six US carriers represented in the top ten. The North American aviation market is the largest single such market in the world. Its domestic RPKs account for 65% of total domestic RPK in the world (Table 10). It is not surprising therefore that European major carriers are keen to serve the US domestic market. It would seem logical to assume that the US sets the most strict ownership limits in the world to protect its 'public interest', in other words, their major carriers' interests.

In the US domestic market, 66% of traffic is controlled by the top five carriers (Table 11). But in Europe, less than 50% of traffic is accounted for by the top five carriers in the region. Comparing the major carriers in the US and EU, the top carrier United Airlines had total scheduled RPK of 202 billion in 1999[36], while Europe's biggest carrier, British Airways, only achieved 118 billion, still less than the fourth largest US carrier, Northwest (Figure 1). With regards to total operating cost per ATK[37], generally speaking, European carriers are higher than US carriers. United Airlines' total operating costs were only 41.7 cents per ATK in 1998 (Figure 2), with all of the top four US carriers' less than 44 cents per ATK. In contrast, British Airways' total operating costs were 48.7 cents in 1998. European carriers have been working hard to reduce their costs over the past ten years. For example, Lufthansa reduced its total operating costs per ATK from 78.6 cents in 1988 to 74.1 in 1993, and then to 46.5 in 1998.

From the above analysis, it is clear why British Airways is keen to merge with KLM. The first reason is to strengthen BA's and KLM's positions enabling them to become the third largest carrier in the world. The second one is to make huge cost savings in order to compete

[34] Jens Flottau, 'U.S. maintains cautious attitude toward TCAA', *Aviation Week & Space Technology*, May 29, 2000, p.42.
[35] ATI news, *'Alitalia and KLM lock horns over damages'*, 1 Aug. 2000.
[36] Data compiled from Air Transport World, May 2000.
[37] Data compiled from *Measures of strategic success: the evidence over ten years*, Research report, Cranfield University, February 2000.

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with the major US carriers. The economic advisor Dorothy Robyn said at the International Aviation Club in Washington DC, however: " If KLM comes under the effective control of BA while Bermuda II still governs US-UK air services, KLM will immediately lose the benefits of the US-Netherlands open skies agreement."[38]

On the US side, the largest carrier, Untied Airlines, is also keen to purchase another larger carrier, US Airways. The House Transportation Committee's ranking Democratic member, Minnesota Representative James Oberstar said that the end result of this proposed merger could be a US industry of the major carriers "with much less competition, higher fares, worse service to the public and financial problems that could lead to failure in an economic downturn"[39]. He warned lawmakers not to take these talks lightly, saying the airline industry "knows that a major carrier's market power depends on the size of the carrier's network. It knows that no carrier can stand by while a competitor substantially increases the size of its network".

Table 9 Top 150 airline group results by segment

Ranking	By revenue	By operating profit
Top 25	68.6%	78.6%
Top 26-50	15.5%	11.1%
Top 51-100	11.8%	7.1%
Top 100-150	4.2%	3.2%

Source: Kevin O'Toole, '*The end game for airline alliances*, The Global Airline Conference, 16-17 May 2000, London.

Table 10 1997 Scheduled passenger traffic share by region

	Domestic		International		Total	
	Passenger	RPK	Passenger	RPK	Passenger	RPK
Europe	14.84%	10.81%	46.11%	36.33%	24.25%	25.38%
Africa	1.40%	0.84%	3.54%	3.20%	2.04%	2.19%
Middle East	1.76%	1.16%	4.98%	4.35%	2.73%	2.98%
Asia and Pacific	22.86%	18.07%	23.26%	30.08%	22.98%	24.92%
North America	53.32%	64.97%	15.87%	20.62%	42.05%	39.64%

Source: Civil aviation statistics of the world 1997, ICAO Statistical Yearbook, Doc 9180/23, Oct. 1999.

Table 11 Major airlines' shares in region

USA		Europe	
United	16.8%	BA	11-14%
Delta	16.7%	Lufthansa	10-13%
American	15.5%	SAS	6-7%
Northwest	8.9%	Air France	5-7%
Continental	8.1%	Iberia	5-6%
Top 5	**66.0%**	**Top 5**	**38-48%**
Top 10	**91.7%**	**Top 10**	**60-75%**

Source: Kevin O'Toole, '*The end game for airline alliances*'.

[38] ATI news, KLM would lose US open skies under BA control, 20 July 2000.
[39] ATI news, Lawmakers question merit of United/US Airways merger, 14 June 2000.

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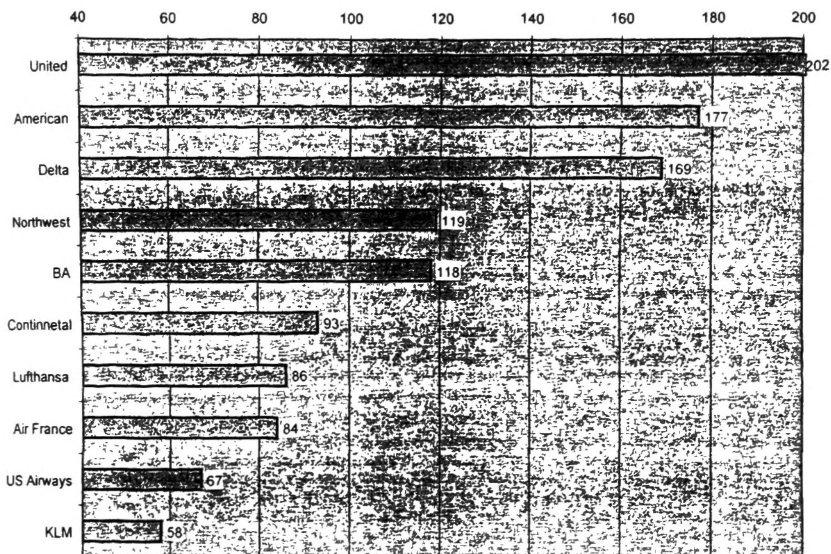

Figure 1 US and EU major airlines' RPKs in 1999

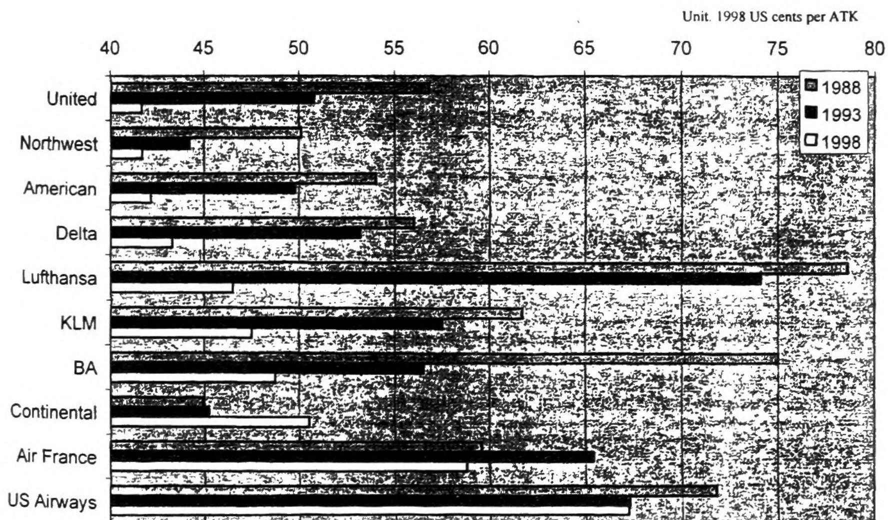

Figure 2 US and EU major airlines' operating costs

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The US's perspective for changing ownership rules

Since January 1991, six large U.S. airlines have declared bankruptcy and three have ceased operations. These bankruptcies have raised congressional concerns about the effects of industry consolidation on domestic and international competition. In 1992, the US GAO (General Accounting Office) undertook a research to provide information on the impact of the restrictions on foreign investment in and control of U.S. airlines by analyzing the potential impact of relaxing those restrictions.

In its report, the GAO stated that foreign investment played an important role in the U.S. economy. Improving access to the world's capital markets for U.S. airlines by relaxing the current restrictions on foreign investment and control could help airlines fund the investments they need to remain viable competitors. Moreover, financial analysts and industry officials agree that investments in airlines historically do not earn as much as investments in other U.S. industries. Because of their low returns and the shortage of available investment funds in the Untied States, the most likely investors in U.S. airlines are foreign airlines, because another airline can capitalize on operating synergies. Investing in a U.S. airline can give a foreign airline more secure access to U.S. passengers for their international routes than marketing alliances, such as code-sharing, alone[40].

However, the US government worried that some foreign airlines are still subsidized by their home governments, has the view that a foreign airline could potentially pass on subsidies to a U.S. airline partner. Also, foreign investments could represent a practical alternative to cabotage. Moreover, relaxing restrictions could have implications for U.S. airline employees and the FAA's safety engineers and inspectors.

The other major block to changing foreign ownership rules is the US Department of Defence. Under the DoD's civil reserve air fleet (CRAF) program, US airlines volunteer their aircraft and crew for use by the military during emergencies. The DoD does not believe that foreign-owned airlines would be as willing or as reliable CRAF volunteers as US-owned carriers. The DoD's firm stance seemed to come as a surprise to an international aviation audience in 1999, which included several proponents of a relaxation in its ownership rules. Given that key driver towards any global change in the industry- and most attractive market- would be the USA[41], this is highly significant.

As a result, the US government has decided to continue the current ownership restrictions.

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[40] US GAO, *Airline Competition- Impact of Changing Foreign Investment and Control Limits on U.S. Airlines*, GAO/RCED-93-7, December 1992

[41] Karen Walker, *Airline Business*, June 1999, p.11.

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Summary and Discussions

The main difference between the traditional bilateral approach/ US open skies and TCAA is that nationality clauses should be eliminated together with ownership restrictions and markets opened up while ensuring fair competition.

From the US's perspective, as they already have signed a significant number of open skies agreements, each of which permits unlimited fifth freedom operations and third country code-sharing operations, in a sense they are already able to take advantage of essentially a liberalised multiple bilateral situation. However, open skies policy is synonymous with a free for all system which is dependent on the good behaviour of air carriers and only a partial opening of the market. In the US market, six large airlines have been declared bankrupt and three have ceased operations in the early 1990s. The domestic market has become much less competitive, with resulting higher fares and worse service to the public. That is why the US GAO's research concluded that improving access to the world's capital markets for U.S. airlines by relaxing the current restrictions on foreign investment and control could help them fund the investments they need to remain viable competitors.

The US DoD's national security argument presents the biggest block to changing the foreign ownership rules. But this view of the DoD is highly unconvincing on some counts. First, if an airline is a U.S. corporation with its operational headquarters in the U.S. and its aircraft 'N' registered, then regardless of the shareholding, the airline remains entirely subject to U.S. law or any emergency decrees which the government might issue. Secondly, in purely practical terms petroleum products and telecommunications are probably of more significance to U.S. national security concerns than whether KLM owned the tired freighter fleet of Northwest, for example[42].

Globally, the prime regulatory concern today is not national security but safety. In a scenario where foreign investment could flow, worldwide, into any airline, it is inevitable that both governments and public would insist on appropriate safety standards for airlines.

With regard to the TCAA concept, is it really 'European regulatory thinking'? From the European perspective, in order to liberalise the aviation market, the first step is to reform the regulation in the two largest markets of the world. As for the US, there is no desire to join TCAA and to share their biggest single market with EU carriers. Maybe the EU could find

[42] Richard Stirland, *Orient Aviation*, June 1999.

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an alternative way by signing a Common Aviation Area agreement with like-minded countries first, such as Australia, New Zealand and Singapore.

Whatever one's personal views on the foreign ownership issue, the debate has served to bring recognition that changing the current foreign ownership regulations means different things to different interest groups, either positive or negative in their supposed consequences. The realities of the changes which have already taken place in the world economy and the civil aviation industry in the last quarter of the 20th century though should be recognised. Some airlines have been able to build up sizeable stakes in foreign carriers. For example, British Airways already owns Deutsche BA in Germany and KLM owns KLM uk in the UK.

As global alliances already have a half share of the world's passenger traffic, competition issues should more of a concern to the US government. The European Commission has already undertaken studies into the effects of codesharing with and without frequent flyer programmes. There is no doubt that these practices have an effect on competition and therefore sooner or later they will have to be taken up under the competition rules[43].

Currently, British Airways and KLM are keen to merge, in order to reduce costs and to strengthen their positions in the world. The US government has already threatened KLM that they will lose the benefits from their open skies agreement if they merge with BA. In the US, United Airlines also intends to merge, in this case with the sixth largest airline, US Airways. As James Oberstar has said, 'the airline industry knows that a major carrier's market power depends on the size of the carrier's network. It knows that no carrier can stand by while a competitor substantially increases the size of its network". These two cases might well trigger further mergers. The final unknown is what the fall-out might be for the smaller carriers.

To sum up, the process of liberalising air transport continues. It is inevitable that airlines should restructure to meet the change. Therefore, the bilateral world should be replaced by multilateralism, with restrictions on foreign ownership loosened. Competition policy should be applied as consistently as possible to air transport in order to balance the benefits to consumers and airlines.

[43] 'The Relationship with America',Presentation by F. Sorensen, Brussels, 21 April 1998

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