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THE INFLUENCES OF AIRLINE OWNERSHIP RULES ON AVIATION POLICIES AND CARRIERS' STRATEGIES

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Abstract: This paper aims to provide an analysis of how aviation markets have been influenced to date around the world by airline ownership rules and how governments and carriers have responded to these influences. It reviews the historical background to the current regulations and assesses the influence that these constraints have had on the airline industry in the EU, US and Asia-Pacific. This paper finds that many US airlines went bankrupt as a result of being unable to find investment partners that had both sufficient capital and the capacity to meet the US citizenship requirements. The lack of competition in Australia and New Zealand was overcome as a result of the regulatory changes that allowed foreigners to set up airlines to operate domestic services. In the EU, the removal of national ownership restrictions enabled British Airways and KLM to fully own airlines in other EU countries. This paper concludes that if the US could eliminate the airline ownership rules contained in the 66 Open Skies agreements it has signed, it would be the most efficient means to forming a unified, global and fully liberalised market for air transport.

Key Words: Airline ownership rules, Deregulation, Air Services Agreements (ASA)

1. INTRODUCTION

Airlines are not able to conduct their businesses in the same way as other global trans-national industries. They are inhibited by the foreign ownership restrictions contained in Air Services Agreements (ASA) and national laws. At the 1944 Chicago Conference, delegates decided to incorporate the nationality or ownership of airlines in two subsidiary accords: the Two Freedoms and Five Freedoms Agreements. Following the Chicago Conference, the first significant ASA was signed between the UK and US governments on 11 February 1946. The Bermuda 1 agreement as it was generally known contained a nationality clause in Article 6 and became a model throughout the world for ASA (Dierikx, 1991).

Air carrier regulation, in terms of the amount of foreign ownership permitted, is embodied in national laws. The particular aims of national regulation in the field of international air transport varies from state to state and are influenced by national economic policies, territorial size and location, the degree of national development, domestic and international politics, and so on. Table 1 lists the ownership and effective control regulations that apply to air carriers for a selection of countries. As may be seen, the airline ownership rules of the US and Canada are particularly restrictive, with each setting a 25% limit on foreign equity. Chile is an exception among the examples shown, with no limit on the proportion of foreign ownership.

Table 1. Foreign ownership limits in selected countries

Country	Maximum % foreign ownership limits in selected countries
Australia[a]	• 49% for international airlines • 100% for domestic airlines
Brazil	• 20% of the voting equity
Canada	• 25% of the voting equity • The maximum single holding in Air Canada by any investor is limited to 15%
Chile	• Designation as a Chilean carrier (domestic or international) has principal place of business as the only requirement
China	• 35%
Colombia	• 40%
India	• 26% for Air India • 40% for privately-owned domestic carriers
Indonesia	• Requires airlines designated under bilateral agreements to be substantially owned and effectively controlled by the other party
Israel	• 34%
Japan	• One third
Kenya	• 49%
Korea[b]	• 50%
Malaysia[c]	• 45% for Malaysia Airlines, but the maximum holding by any single foreign entity is limited to 20% • 30% for other airlines
Mauritius	• 40%
New Zealand[d]	• 49% for international airlines • 100% for domestic airlines
Peru	• 49%
Philippines	• 40%
Singapore	• None
Taiwan	• One third
Thailand	• 30%
US	• 25% of the voting equity

Source: Chang and Williams, 2001.

Note: [a] Australia's limit was revised in 1999.
[b] Korea's limit was revised from 20% to 50% in 1998.
[c] Malaysia's limit was revised from 30% to 45% in 2000.
[d] New Zealand's limit for domestic carriers was revised in 1988 and the international limit was revised in 1996.

While foreign ownership rules have protected national airlines, they have also limited the strategies available to governments whose carriers have been in financial difficulties. Governments often state that they find the financing of their airlines' expansion difficult. Without the removal of restrictions on ownership and effective control in bilateral agreements however, foreign investors are prevented from purchasing a majority shareholding in an airline.

The right to designate airlines enables a government to safeguard its sovereignty, as designated carriers must be "substantially owned and effectively controlled" by nationals. Most states set up their own airlines in order to exercise the traffic rights exchanged with other countries. Often though, these government-owned airlines have been unprofitable. As a result, their national air transport interests have not been particularly well served. However, states without an international airline of their own have been unable to designate airlines from third countries to exploit their traffic rights (Doganis, 1996). This was the situation that the Philippine Government faced in 1998 when the national carrier had to halt most of its flights due to a financial crisis. The Philippine Government could not designate another country's airline to fly on its behalf, and even if a foreign airline had been willing to take over the majority shareholding of Philippine Airlines, the problem would still have remained, unless the bilateral partners had been willing to amend the nationality clauses in the ASA.

In Europe, government-owned airlines, such as Aer Lingus, Air France, Alitalia, Iberia[1], Olympic, Sabena and TAP Air Portugal have experienced heavy operating losses over long periods of time. In order to maintain their operations, their governments have had to inject large amounts of capital. As the European Commission has increasingly limited state aid, states have had to consider ways of restructuring their inefficient airlines to prepare them for the more competitive environment they now face. Privatisation has been one of the key strategies that governments have adopted. The foreign ownership restrictions contained in most ASA however, place limits on the amounts of capital that can be acquired from outside the EU.

The ownership rules also restrict merger and acquisition activity, thereby preventing the airline industry from developing in the same ways as other industries and in part justifying the exclusion of airlines from the competition provisions that govern other sectors. As a result of their very large domestic market, US carriers have been able to develop through merger and acquisition, but airlines in Europe, Asia and Latin American are unable to grow in this way.

The rapidly changing air transport environment of privatisation, liberalisation and globalisation is forcing airlines to seek structural adjustments in order to survive. Carriers are asking to have more freedom in order to ensure their profitability. Although pressures have been growing to ease the ownership rules contained in bilateral agreements to allow airlines greater commercial freedom, some countries have been fearful of the consequences.

While the US Airline Deregulation Act of 1978 removed most domestic limitations on market entry, it failed to remove the restrictions placed on foreign ownership of US carriers. Developments in the early 1990s however, including the bankruptcies and mergers of airlines with heavy debt burdens, have prompted a re-examination of the limits placed on foreign capital. Investment by foreign airlines offers an alternative to the borrowing that has undermined the financial health of some airlines.

This paper examines US market development since deregulation with strict foreign ownership restrictions in place. It explains how the US Government reacted to market changes resulting from the economic downturns and rapid liberalisation around the world. The strategic reactions of airlines in response to the relaxation of ownership rules in the EU, Australia and

[1] Iberia was substantially privatised in 2001.

New Zealand and their effects are also analysed. As a comprehensive worldwide strategy for changing ownership rules has yet to be developed, this paper analyses the prospects for change in different organisations and makes suggestions as to how such change could occur.

2. FOREIGN OWNERSHIP OF US CARRIERS

2.1 Market developments before the early 1990s

The apparent financial performance of US major airlines has weakened since deregulation. While five of the eleven major airlines had cumulative net profits between 1987 and 1991, only two had net profits in 1991 (US GAO, 1992). Losses in 1990 were the worst then ever experienced by the industry. The major airlines as a whole lost $3.8 billion in 1990, and an additional $1.8 billion in 1991. Eastern and Pan Am, airlines that later ceased operations, recorded net losses every year between 1987 and 1991. Continental also had net losses in four of those five years. The financial turmoil in the industry was caused in part by escalating fuel costs, recession-induced weakening of domestic traffic and a drop-off in international traffic because of fears of terrorism as a result of the Gulf War (US TRB, 1991). It should be noted that the statutory 25% limit on foreign voting stock prevented these loss-making airlines from attracting badly needed foreign capital.

The mid-1980s were the peak years for mergers, acquisitions and alliances within the US domestic airline industry. Between April 1985 and the end of 1987, over twenty significant acquisitions and mergers took place. Since 1987, the level of concentration has increased significantly as a result of further mergers and bankruptcies. By January 1992, two major[2] airlines (Eastern and Pan American) and two national airlines (Braniff and Midway) had ceased operations; three more major airlines (Continental, America West and Trans World) were being reorganised under bankruptcy court protection; and another six airlines, Air California, Jet America, Pacific Southwest, Piedmont, Muse (Transtar) and Western, had been merged into surviving major airlines (US GAO, 1992). As a result of the mergers, the largest airlines increased their market share markedly. While in 1987 the top five airlines accounted for 61% of the US domestic market, by 1991 the share of the five largest airlines had risen to 72%.

2.2 Congressional and administrative proposals for relaxing ownership rules

Foreign investment could provide US air carriers with an important source of capital to avoid bankruptcy. The sensitivity of the citizenship and control issues, and the conflicting influences of the concerned parties however, have produced a pronounced indecisiveness over the matter of trade liberalism in respect of the DOT's aviation policy. This stems from the fact that the administrative case law has reached the outer limits of trade liberalism, as permitted by the governing statute. Thus, proponents of liberalisation of foreign investment law sought to amend the Federal Aviation Act to allow up to 49% foreign ownership (Edwards, 1995).

In February 1993, US Representatives Bud Shuster and William Clinger introduced legislation to amend the Federal Aviation Act. The legislation provided a list of factors to be considered, including the following: the financial condition of the air carrier at issue; the

[2] There are three categories of airlines in the US. A major airline is one with annual operating revenues of over $1 billion. A national airline has revenues of between $100 million and $1 billion, while a regional airline has revenues of less of $100 million.

effect of the purchase on employees and competition; the extent to which the purchaser is government-owned; the amount of control the purchaser would have; and the presence of reciprocal opportunities for US airlines and investors.

On 7 April 1993, President Clinton appointed a bipartisan Commission to assist in the development of aviation policy. The Commission's mandate was to "investigate, study and make policy recommendations about the financial health and future competitiveness of the US airline and aerospace industries". The Commission made numerous recommendations to the President and Congress, including a suggestion for the relaxation of the foreign investment requirement (Edwards, 1995). The Commission specifically recommended that the Federal Aviation Act be amended to allow the US to "negotiate bilateral agreements that permit foreign investors to hold up to 49% voting stock in US airlines". The Commission further stipulated that those bilateral agreements must contain equivalent opportunities for US airlines and that the foreign investor must not be government owned.

2.3 Open Skies policies since 1992

On 31 March 1992, the US Open Skies initiative was announced. The Final Order defining Open Skies consisted of eleven points. Although public comments solicited during the drafting period suggested that cabotage and ownership/control terms be added to these eleven points, both of these terms were expressly rejected by the DOT. The Open Skies Order gave an official gloss to the conservation policy on linkage and formally narrowed the DOT's discretion to negotiate ownership and control in exchange for access to foreign airspace.

In October 1992, only two months before the EU Third Package entered into force, the US signed its first 'Open Skies' agreement with the Netherlands. It followed this by establishing a series of Open-Skies bilaterals with individual EU countries. This policy was intended to divide Europe. It was in effect an attempt to pre-empt the internal Community discussion on external transport relations and prevent a "fortress Europe". The US was concerned that its 5th freedom rights within the EU would become cabotage after the EU Single Aviation Market was formed, and so be restricted. The Open Skies agreements enabled this problem to be overcome, as unlimited fifth freedom rights with EU countries were included. Fragmentation of Europe's common aviation market has occurred as a result of the Open Skies agreements between the US and individual Member States (Chang and Williams, 2002).

As nationality clauses still exist in most ASA, airlines have been keen to enter into alliances with carriers in other countries in order to expand their route networks. Once a country has signed an Open Skies agreement, their national airline's alliance with a US carrier is able to obtain anti-trust immunity from the US Government. In the EU, in order to allow their flag carriers to enter into alliances with US carriers, 11 countries have signed such agreements.

In 1995, following the success of negotiating Open Skies agreements with a number of European countries, the US started to shift the focus of its international aviation policy to Asia-Pacific. On 8 April 1997, Singapore became the first country in the region to sign an Open Skies agreement with the US, followed by Brunei, Taiwan, Malaysia, New Zealand and South Korea. By November 2004, the US had established Open Skies agreements with 66 countries around the world.

2.4. Market developments since the early 1990s

In 1992, 95% of US domestic passenger trips were made using the top ten airlines and 70% using the top five. These percentages have declined slightly since then. By 1998, 91% of trips were on the top ten airlines and 67% on the top five. Similarly, the top five carriers generated 78% of revenue in 1992, compared with 71% in 1998 (US TRB, 1998).

As the US economy has been experiencing a downturn since 1999, the problem of airline finance has reappeared. Some of the largest airlines have proposed mergers in order to survive. In May 2000, two of the largest US airlines, United Airlines and US Airways, proposed to merge. Considerable debate ensued and in July 2001 the US Department of Justice (DOJ) announced that the proposed merger between the two carriers was anticompetitive. Another merger however was allowed; American Airlines completed its acquisition of bankrupt TWA's assets after securing approval for the takeover from the US federal courts in April 2001.

The major difference between airline mergers now and those occurring in the mid 1980s is the extent to which the industry will be concentrated. The proposed United-US Airways merger would have given the combined airline over 25% of the total US domestic market. The combined American Airlines-TWA now has over 18%, and Northwest-Continental if it had gone ahead would have had 17% (US GAO, 2000). As the DoJ opposes mergers of large airlines, it is uncertain whether or not most airlines could survive during a recession of the US economy. Foreign investment provides another solution to the problem of bankruptcy. Thus, a study by the US TRB in 1998 recommended, "Restrictions against foreign citizens owning and operating US-based airlines should be lifted."

3. THE EUROPEAN UNIO SINGLE AVIATION MARKET

3.1 European Union aviation policy and the Third Package

The European Commission adopted its first memorandum specifically on air transport in July 1979. This identified the overall problems of the industry and recommended a framework for establishing a new policy, including the liberalisation of bilateral restrictions and a review of state subsidies. In March 1984, the Commission issued its second memorandum on the sector, recommending further liberalisation measures. In the memorandum it emphasised that "US-style" deregulation would not be introduced into the Community, as the US market was structurally different from the EC. The US was a unified domestic market reserved for US carriers. The Commission proposed that the long-term objective for the EC was the creation of a common air transport market.

A major difference between US deregulation and the EU Third Package relates to airline ownership rules. Although the US was the first country in the world to deregulate its domestic air transport market, it still heavily restricts foreign ownership of its airlines. The Third Package came into force on 1 January 1993, completing the development of a single European aviation market. Part of the Third Package, Council Regulation 2407/92, requires the granting and maintenance of operating licences by Member States in relation to air carriers established in the Community. When a company satisfies certain financial and technical fitness criteria, it is entitled to be licensed as an air carrier and as such can operate

services wherever it wants within the Union[3], making its own decisions on capacity and fares. These rights can be exercised by any Community citizen throughout the whole of the European Union without discrimination on the grounds of nationality.

3.2 Major airlines' strategic responses to the Third Package

The EU is the first region in the world to remove airline ownership restrictions. What has happened in the intra-EU market could occur in other regions when they liberalise their aviation markets. It is important therefore to analyse how European majors have responded to Council Regulation 2407/92.

Cross-border acquisition has been one of the best ways to access an otherwise inaccessible EU market. This has been the case for most European majors including British Airways (BA), KLM, Lufthansa, SAS and the SAirGroup (Table 2). BA has until very recently been keen to acquire airlines in other EU countries. It purchased a 49% shareholding in 1992 in Delta Air, a German regional carrier (later renamed Deutsche BA), increasing this to 100% in 1997.[4] It also acquired a 49.9% shareholding in TAT (France) in 1992, increasing this to 100% in 1996. The UK's flag carrier also invested FFr 630 million in Air Liberté the same year. In 1998, TAT was absorbed into Air Liberté, becoming the second largest carrier in France. DBA and Air Liberté did not perform well however, as a result of the strong competition they faced from Lufthansa and Air France respectively in their domestic markets. DBA was forced to review its network and cut some international routes, only achieving its first break-even in 1999. As for Air Liberté, BA sold it in the early part of 2000 to SAirGroup carrier, AOM.[5]

Providing feeder traffic to a home hub forms a second motive for cross-border acquisition. Some carriers have been keen to acquire airlines in other countries for this purpose. For example, KLM purchased Air UK in order to connect passengers from a large number of regional airports in the UK with its intercontinental flights operated from Amsterdam. A third motive may come in terms of slot acquisition. As the grandfather rights system of allocating airport slots still exists, purchasing an airline is one of the easiest ways of obtaining these scarce resources. Lufthansa's decision to acquire a 20% shareholding in British Midland may well have been motivated by a desire to gain more slots at Heathrow.[6]

Table 2. Major European Airlines' Strategies after the Third Package

	BA	KLM	LH	SAS	SAirGroup[b]
Setting up new airlines in other EU countries	None	Buzz (1999)	None	None	None
Investment in EU carriers	Deutsche BA (100%, 1997, Germany)[a] Air Liberté (70%, 1996, France), which was sold in 2000. Iberia (9%, 2000,	KLM uk (100%, 1997, UK) Braathens (30%, 1997, Norway, which was	Lauda Air (20%, 1993, Austria) Air Dolomiti (26%, 1999, Italy) British Midland	Air Botnia (100%, 1998, Finland) British Midland (20%, reduced from 40% in 1999, UK)	Sabena (49.5%, 1995, Belgium) Air Europe (49.9%, 1998, Italy) Air Littoral (49%, 1998, France)

[3] Full cabotage (domestic operating rights) was implemented on 1 April 1997.
[4] EasyJet currently has an option to buy Deutsche BA.
[5] The SAir Group was declared bankrupt in 2001.
[6] This has recently been increased to just below 30%.

	Spain)	sold to SAS in 2001.)	(20%, 1999, UK, raised to 30% in 2002)		LTU (49.9%, 1998, Germany) Volare (34%, 1998, Italy) AOM (49%, 1999, France)

Note: [a] (the current shareholding, year acquired, registered country)
[b] Data shown refers to the situation in Spring 2001.
Source: Chang and Williams (2002)

Despite nationality clauses having been removed, relatively few airlines have made full use of EC Regulation 2407/92. Of the major airlines, only BA, KLM and SAS have acquired full ownership of carriers in other EU countries. The reasons for this are firstly that while the ownership rules have been relaxed within the EU, third countries still tend to take a rigid view of the route rights granted to foreign carriers; this means there is a high risk factor for any acquisitions. The second reason is that many governments remain resistant to their airlines being taken over by foreigners. In response to the fast growing low-cost market, KLM is the only European major that has set up its own low-cost carrier in another country.

The SAirGroup, as a non-EU carrier, had been keen to acquire shareholdings in EU carriers in order to enjoy the benefits of the liberalised single market. The Belgium Government sold 49.5% of the shareholding in its national airline Sabena to the SAir Group in 1995. More recent acquisitions included 49.9% of Air Europe and 34% of Volare in Italy, 49% of Air Littoral and 49% of AOM in France, and 49.9% of LTU in Germany. A 20% stake in TAP and one of 42% in Portugalia were also planned, but these did not materialise owing to financial difficulties. The effect of heavy financial commitments to struggling carriers such as Belgium's Sabena and French regional carriers Air Littoral, Air Liberté and AOM, drained resources away from the SAirGroup. In October 2001, Swissair announced that it was bankrupt, a move that precipitated the financial collapse of Sabena a month later.

3.3 Transatlantic Common Aviation Area (TCAA)

Although nationality clauses have been removed in the EU, non-EU countries are not subject to this change. As the EU-US is the largest international airline market, the formation of a common aviation market could help to alleviate this situation. In September 1999, the Association of European Airlines (AEA) presented a new policy statement on a "Transatlantic Common Aviation Area". In order to extend the scope of application of Community legislation, it advocated the Single European aviation market as one that could provide a sensible basis for the development of a multilateral approach to transatlantic services. If a TCAA were to be established on this basis, it would mean that carriers registered in both the EU and US could exercise all eight freedoms of the air. For example, BA could fly from its subsidiary Deutsche BA's base in Munich to the US; Lufthansa could fly from Heathrow and Manchester to the US, given that they already own 30% of British Midland and so have access to sufficient slots; and KLM could fly to the US from Stansted Airport using KLM uk's or Buzz's slots. As 41% of EU-US passenger traffic in 1998 originated or was destined for the UK, it has not been surprising that European majors have been keen to acquire carriers in the UK (Chang and Williams, 2002).

4. THE CHANGING SCENE IN ASIA-PACIFIC

4.1 New Zealand

In June 1986, the New Zealand Government amended the Air Services Licensing Act (1983) removing specific restrictions on overseas investments in domestic airlines. In policy guidelines issued to the Overseas Investment Commission (OIC), it was stipulated that up to 50% investment by foreign airlines was acceptable. In February 1988, the Government approved a temporary increase in Ansett Australia's shareholding in Ansett New Zealand to 100%, provided a return to 50% occurred within two years if a suitable New Zealand shareholder could be found. Seven months later, the Government decided to remove the previous 50% limit on investment by foreign airlines. The OIC was thereby able to approve 100% investment by any foreign carrier in a domestic airline and as such New Zealand became the first country in the world to remove foreign ownership restrictions on domestic carriers.

Following the New Zealand Government's decision to allow foreigners to fully own the country's domestic carriers, the Australian carrier Ansett Australia took over Newmans Air in 1987, renaming it Ansett New Zealand (Ansett NZ). Ansett NZ effectively broke the Air New Zealand (ANZ) monopoly with the introduction of trunk route air services. Lower airfares, improved service quality, better on-time performance and more frequent services were the result of Ansett NZ entering the market (Mills, 1991). These were the main reasons why the Government had decided to remove its ownership restrictions. The lower load factors and fare reductions however, resulted in both companies incurring losses, with Ansett NZ taking some five years to show any profit. It was able to survive due to the strong financial backing of its parent company, Ansett Australia, which helped it to develop its market share and so achieve profitability. In 1996, Ansett NZ was sold to Rupert Murdoch's News Corporation. This move followed Air New Zealand exercising options to acquire first 50% and then 100% of Ansett Australia. (The NZ Commerce Commission would not allow Air New Zealand to have a controlling influence over its main domestic rival.) In March 2000, News Corporation sold Ansett NZ to local investors, from which point it operated under a franchise arrangement as Qantas New Zealand. On 21 April 2001 however, Qantas NZ's operating company, Tasman Pacific Airlines, halted all services after being placed in receivership with debts of more than NZ$20 million ($8.25 million). Qantas NZ's collapse left Air New Zealand once again as the only trunk operator in the country.

4.2 Australia

The Australian Government's decision to relax the limit on foreign investment in its international carriers preceded the privatisation of its airlines. The change allowed up to 49% foreign investment in total, with a single foreign carrier holding limited to 25% and total foreign carriers to 35%. It was considered that by raising the foreign ownership limit there 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. Recently, the flag carrier Qantas called for the Australian Government to ease the ownership regulations in order to allow it to have more international investors. Owing to the 49% foreign ownership restriction, with 25% of the shareholding owned by British Airways, only 24% is available for foreign institutions.

Despite the restrictions placed on its international carriers, Australia changed its ownership rules to allow foreigners to own 100% of domestic airlines. The change allowed Qantas's international competitor, Air New Zealand, to fully purchase its domestic rival, Ansett Australia, which it did in September 1996. A difficulty then arose as a result of Ansett Australia beginning to operate international services. The mechanism used to get around this problem involved Ansett International being separated from Ansett Australia. In February 2000, Air New Zealand took up its right to buy News Corporation's shares in Ansett. As a result, Air New Zealand owned 100% of Ansett and 49% of Ansett International.

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, the locally owned carrier Impulse Airlines announced its intention to operate low-cost services. It was inevitable that serious competition would occur between these two low-fare carriers and the incumbent airlines, Qantas and Ansett Australia. In June 2000, a domestic price war erupted in Australia. The fare war was not long lived however, as on 1 May 2001 Impulse announced that its institutional investors had withdrawn their backing and that in future it would be flying on behalf of Qantas. Under this arrangement, Impulse's aircraft, crew and maintenance staff would operate on contract to Qantas Airways under the QantasLink regional brand. Despite the market share of over 50% that the Impulse arrangement provided for Qantas, the Australian Competition and Consumer Commission (ACCC) approved the deal. The ACCC considered that the Qantas tie-up would minimise the impact on competition, subject to certain conditions, and represented a better alternative to the closure of Impulse. On 14 September 2001, Ansett ceased operation after 65 years, two days after former parent Air New Zealand placed it in administration. Ansett's collapse established Virgin Blue as the second largest carrier in Australia's domestic market.

4.3 Other countries

In 1998, South Korea's second national carrier, Asiana, was suffering badly as a result of an economic downturn in the country. The Korean Government announced that the foreign ownership limit would be increased from 20% to 50%, in order to provide Asiana with a much-needed cash injection. In Malaysia, the Government has recently given permission for the foreign shareholdings limit in Malaysia Airlines to be increased from 30% to 45%, easing the way for a foreign carrier to take a strategic stake in the company. Chinese regulatory authorities have also raised the ceiling on foreign investment in the country's airlines to 49% from the previous 35%, in a move designed to draw more cash into the industry.

5. CONCLUSIONS

During the period 1990-1994, a combination of strong competition and adverse external economic and political change damaged the profitability of US airlines. Two major carriers (Eastern and Pan American) and one national airline (Midway) ceased operating, and two other major airlines (Continental and American West) were being reorganised under bankruptcy court protection. One main reason for this was that these airlines had been unable to find investment partners that had both sufficient capital and the capacity to meet the US citizenship requirements. Merging with other local carriers, although an option, simply increased market concentration. Foreign investment provided another solution, as was the case with Northwest (and KLM) in the early 1990s.

The merger of Air Canada and Canadian Airlines has given rise to claims that the enlarged Air Canada has an unhealthy advantage over its rivals. Faced by a growing number of complaints from travellers, it was forced by a transport committee of the House of Commons to produce a customer service plan. Growing disappointment is also shown in a poll conducted by a national newspaper that reportedly showed that two-thirds of all Canadians would support foreign carrier competition on domestic routes. Thus, the Competition Bureau appears to be willing to allow foreign carrier competition under certain conditions, including the use of Canadian staff and local performance of maintenance work (Rijsdijk, 2001).

It is true that some national governments have relaxed, or are beginning to relax, their restrictions on foreign ownership. New Zealand was the first country in the world to relax its domestic carrier foreign ownership rules and has allowed full ownership for fourteen years now. Under the new policy, Air New Zealand's monopoly was effectively broken with the introduction of trunk route air services by Ansett New Zealand. This precedent was followed by Australia, which relaxed its domestic foreign ownership rules in 1998. As a result, British-owned start-up carrier Virgin Blue broke Qantas and Ansett Australia's duopoly. The EU however, was the first region in the world to remove the nationality clauses in its ASA, resulting in a number of major flag carriers establishing subsidiaries in other EU states.

As the economic, political and cultural environment varies from one country to another, APEC's perspective for a "Plurilateral Club" among like-minded countries should be encouraged. Three or more like-minded countries could initiate co-operative arrangements between and among themselves, so as to accelerate the liberalisation of air services. Any countries that do not feel ready to join the club would have the option of joining at a later date. This is the case with the five countries in APEC: Brunei, Chile, Malaysia, New Zealand and the US, which signed a multilateral Open Skies agreement in Washington D.C. in May 2001. The nationality clauses in the agreement are replaced by "principal place of business and effective control". This is the first time that the US has signed any kind of agreement that does not require majority ownership for designated airlines. Indeed, if the US hopes to take the lead in liberalising the global air transport market, its Open Skies agreements with 56 countries could provide a framework for the reciprocal elimination of restrictions on foreign ownership, foreign control and cabotage rights. These liberal bilateral agreements might lead to another Chicago Convention being established, where nations could exchange rights on a multilateral basis to form a unified, global and fully liberalised market for air transport.

Professor Wassenbergh has commented, " …Man, who makes law, will always be outpaced by events. As regards the law of the air, however, he will have to try to keep the time-lag as short as possible, …In aviation policy, therefore, even though existing legal views may be taken as a basis, a watchful eye will have to keep pace" (Wassenbergh, 1962). This paper has indicated that from an historical perspective, it is clear that aviation policy and carrier strategies have been significantly influenced by restrictive ownership rules for nearly 60 years. It is surely time to change this basis to help airlines survive in the new millennium.

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