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COMPETITION LAW CONSIDERATIONS FOR AIRLINE ALLIANCES

HAVAYOLU İTTİFAKLARINA İLİŞKİN REKABET HUKUKU DEĞERLENDİRMELERİ

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ABSTRACT

The deregulation and liberalization of the airline industry have led to increased competition in international commercial air transport services, resulting in the emergence of new business models by airlines. This paper investigates the merits and demerits of deregulation and the formation of international airline alliances (IAAs), focusing on their competition law implications. IAAs, which mimic mergers, allow airlines to circumvent domestic restrictions on foreign ownership and expand their market reach through cooperative agreements. These alliances present various forms of cooperation, such as code sharing and block spacing, and aim to integrate products, services, and standards between carriers to provide better service to consumers and eliminate double costs. However, the lack of uniform competition law rules globally means airlines must navigate different national regulations. This paper examines the impact of IAAs on competition, particularly in the European Union and United States, and the response of competition law authorities. It also explores the potential anti-competitive behaviour in the aviation industry and the need for a multilateral approach to aviation competition law.

Key words: *Competition law, Airline Alliances, Aviation Competition Law.*

ÖZ

Hava yolu endüstrisinin deregülasyonu ve serbestleşmenin bir sonucu olarak, uluslararası ticari hava taşımacılığı hizmetlerinde rekabet artmış ve hava yolları tarafından yeni iş modelleri ortaya çıkarılmıştır. Bu makale, deregülasyonun ve uluslararası hava yolu ittifaklarının kurulmasının avantajlarını ve dezavantajlarını rekabet hukuku üzerindeki etkilerine odaklanarak incelemektedir. Birleşmeleri taklit eden uluslararası hava yolu ittifakları, hava yollarının yabancı mülkiyete ilişkin ulusal kısıtlamaları aşmasına ve iş birliği anlaşmaları yoluyla pazar erişimlerini genişletmesine olanak tanımaktadır. Bu ittifaklar, kod paylaşımı ve blok kapasite anlaşmaları gibi iş birliği biçimleri sunmakta; taşıyıcılar arasında ürün, hizmet ve standartların entegrasyonunu hedefleyerek tüketicilere daha iyi hizmet vermeyi ve çifte maliyetleri ortadan kaldırmayı amaçlamaktadır. Ancak, rekabet hukuku kurallarının dünya genelinde yeknesak olmaması, hava yollarının farklı ulusal düzenlemelere uyum sağlamasının zorunlu olduğu anlamına gelmektedir. Bu çalışma, uluslararası hava yolu ittifaklarının rekabet üzerindeki etkisini, özellikle Avrupa Birliği ve Amerika Birleşik Devletleri bağlamında ve rekabet hukuku otoritelerinin tepkisi bakımından incelemektedir. Buna ek olarak, havacılık sektöründe ortaya çıkabilecek rekabete aykırı uygulamaları incelemekte ve sivil havacılıkta rekabet hukuku bakımından çok taraflı bir yaklaşıma duyulan ihtiyacı ele almaktadır.

Anahtar kelimeler: *Rekabet hukuku, Hava yolu ittifakları, Sivil havacılıkta rekabet hukuku.*

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1. INTRODUCTION

Deregulation and liberalization of the airline industry led to increased competition in international commercial air transport services which resulted in the emergence of new business models by airlines.[3] An increase in demand in international travel and the fact that several states have limited international air travel options contributed to the formation of international airline alliances (hereinafter IAAs).[4]

Another reason for the formation of IAAs was the need to circumvent domestic restrictions regarding the foreign ownership of airlines which are a state purview protected by international treaties such as the Convention on International Civil Aviation (hereinafter the Chicago Convention).[5] The Chicago Convention states that aircraft require authorization before entering the airspace of another State and States have rules in place for national security reasons which prohibit the operation of aircraft in their territories based on foreign ownership laws.[6]

IAAs are able to work around these foreign ownership provisions by mimicking mergers.[7] IAAs are cooperative agreements entered into by airlines and this cooperation may be limited e.g. interline agreements (agreements where origin to final destination fares are published by both carriers and revenue is divided among them) or it may be high as in metal-neutral joint ventures (revenue and profit-sharing agreements[8]).[9]

IAAs present in various forms such as code sharing which allows airlines to sell seats on a partner's flight[10] and block spacing where a set of seats is allocated to an airline in a partner's flight.[11]

The deregulation of the airline industry allowed airline business models to evolve, and airlines consolidated in order to maximize profits.[12] These business models had an effect on the competition in the airline industry and varying implications for consumers (e.g. more flight options) as well as the airlines (e.g. bankruptcies).[13] Scholars predicted that competition in the airline industry in future would be between alliances rather than individual carriers.[14]

Globalization pushed airlines to expand and strengthen their market positions as far as they could both domestically as well as internationally and alliances became a viable and successful mechanism. Public international law, however, has not developed to a stage where there are sufficiently uniform competition law rules to apply in this arena

[3] Jan K. Brueckner and W. Tom Whalen, "The Price Effects of International Airline Alliances," 43 *J.L & Econ.* 503 (2000). Brueckner notes the formation of hub-and-spoke networks and frequent flier programs. Also see Li Zou, Chunyan Yu and Daniel Friedenzohn, "Assessing the impacts of northeast alliance between American airlines and JetBlue airways," *Transport Policy*, 140, (2023): 42, accessed 30 September 2025 https://doi.org/10.1016/j.tranpol.2023.06.011

[4] Charles N.W. Schalngen, "Differing Views of Competition: Antitrust Review of International Airline Alliances," *200 U. Chi. Legal F*. 413 (2000) and Sreekumar Sisira, "A Critical Analysis of Cartels in the Aviation Industry," *Indian JL & Legal Rsch.* 5(1) (2023): 1.

[5] Convention on International Civil Aviation, opened for signature December 7,1944, art. 1, 15 U.N.T.S 295 (entered into force April 4, 1947). Article 1 gives states "…complete and exclusive sovereignty over the airspace above its territory."

[6] Chicago Convention Article 3 (c).

[7] Schalngen, "Differing Views of Competition," 413. IAAs coordinate activities such as pricing of airline tickets.

[8] Paul Stephen Dempsey, "Regulatory Schizophrenia: Mergers, Alliances, Metal-Neutral Joint Ventures and the Emergence of a Global Aviation Cartel" 83(1) *J Air L & Com 3* (2018) 13.

[9] Kate Markhvida, "Antitrust and Competition Law" in PS Dempsey, RS Jakhu, *Routledge Handbook of Public Aviation Law* (Routledge 2017) 309.

[10] "Code-Sharing Agreements in Scheduled Passenger Air Transport – The European Competition Authorities Perspectives." *European Competition Journal* 2 (2006): 263. See also Lan Teng and Mincong Tang, "Cooperative Strategy for Airline Code-Share Agreements–A Comparative Analysis," *Promet-Traffic & Transportation* 36(3) (2024): 433.

[11] Ruwantissa Abeyratne, "The Aviation System Block Upgrades: Legal and Regulatory Issues," *Air and Space Law* 39(2) (2014): 131.

[12] Eli A. Friedman, "Airline Antitrust: Getting Past the Oligopoly Problem," *University of Miami Business Law Review* 9 (2000-2001): 121; Cai, Jingmeng, and Jae Woon Lee. "Enforcing China's Anti-Monopoly Law in Regulated Industries: A Study of the Airline Industry," *Journal of Antitrust Enforcement* 9(3) (2021): 566.

[13] Kate Markhvida, "Antitrust and Competition," 308.

[14] Clinton V. Oster and Don H. Pickerell, "Marketing Alliances and Competitive Strategy in the Airline Industry," *Logistics and Transportation Review* 22(4) (1986): 371; Lan Teng, and Mincong Tang. "Cooperative Strategy for Airline Code-Share Agreements – A Comparative Analysis," *Promet-Traffic&Transportation* 36(3) (2024): 433.

hence airlines find themselves dealing with different national competition law rules.[15]

IAAs seek to achieve an integration of products, services and standards between carriers with the aim of providing better service to consumers and eliminating double costs.[16]

The subject of this paper is to investigate the merits and demerits of deregulation and the emergence of airline alliances and outline the competition law implications they present and the response of competition law authorities around the world. This investigation involves a study of the deregulation of civil aviation to provide context in the determination of whether alliances have a negative or positive impact on competition. Focus will be mostly paid to the European Union and United States systems since they have well-developed air transport services.

2. RESEARCH METHODOLOGY

Under traditional competition law rules, undertakings are prohibited from substituting cooperation for competition and under merger control rules, joint ventures and other types of concentrations are strictly regulated ex-ante. During a period of deregulation in the aviation sector during the late 1970s which began with the US Airline Deregulation Act of 1978 and culminated in the global Open Skies Agreements, the aviation industry moved away from an economic model built around heavy State participation and gravitated towards a more liberal free market approach and this new approach encouraged competition among airlines. Various benefits were gained through this new model such as the emergence of low-cost carriers and increased choices for consumers, but increased competition led to the creation of international alliances in the pursuit of cost efficiencies and as a response to strict regulations against cross-border mergers. Alliances were a necessary tool to achieve several feats in the industry such as meeting the consumers' demand for seamless international travel. However, in the absence of a global competition law enforcement mechanism, different approaches were taken to regulate these alliances. This paper is a qualitative investigation into international alliances and their compatibility with competition law rules. The research questions for this paper are as follows:

1. What are the competition law implications raised by deregulation and the emergence of international airline alliances?
2. What are the approaches that have been taken by the EU and the US competition law authorities to regulate international airline alliances?
3. Are the current methods of regulation international airline alliances fit for purpose?
4. What are the solutions to improve the regulation of international airline alliances while protecting the benefits of competition?

3. THE COMPETITION LAW ISSUES

Airline alliances are arrangements between airlines in which they agree to cooperate to varying degrees.[17] This cooperation is aimed at long-term financial gain and acquiring a competitive advantage on the market.[18] As mentioned earlier, the nationality restrictions that are common in most bilateral air transport agreements have been a major obstacle to the consolidation of airlines. In the presence of these restrictions, airlines cannot engage in mergers with, or acquisitions of foreign airlines and international alliances are a way around this limitation.[19]

Due to an increase in air traffic caused by increased globalization and the limited capabilities of several countries where only a few airlines are designated to service international routes making it impractical for these airlines to offer their service on a wider scale, airlines resorted to international alliances as a response.[20] The operations of an alliance are nearly identical to a merger.[21]

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[15] Viktoria HSE Robertson, "International Competition Law?" in *Elgar Encyclopedia of International Economic Law*, 2nd ed., edited by Thomas Cottier and Krista Nadakavukaren Schefer, (2023) Chapter III.7.1.1; Daniel Steine, "The International Convergence of Competition Laws," *Manitoba Law Journal* 24 (1994): 581.

[16] Peng, I-Chin, and Hua-An Lu. "Coopetition effects among global airline alliances for selected Asian airports," *Journal of Air Transport Management* 101 (2022): 102; Scott Kimpel, "Antitrust Considerations in International Airline Alliances," *Journal of Air Law & Commerce* 63(2) (1997): 476.

[17] Kate Markvhida, "Antitrust and Competition," 316.

[18] Baronnat, Emilie. "EC Antitrust Control of the SkyTeam Alliance," *Aviation L & Pol'y* (Spring 2008): 4251.

[19] Kate Markvhida, "Antitrust and Competition," 317.

[20] Schalngen, "Differing Views of Competition," 413.

[21] *Ibid*.

Another reason for airlines to engage in this type of commercial arrangement is the need for large investments where profitability is low.[22] Where one airline is struggling but cannot access the required investment because the profitability is low a solution would be to join an alliance with a partner which would enable them to aquire that investement while at the same time aquiring the capability to begin operating at an efficient and profitable level.

IAAs aim to integrate a range of products, services and standards between two or more carriers which eliminates cost duplication.[23] By adding value to these services the alliances also seek to create economies of scale.[24] IAAs for example, allow a passenger to travel to a destination via different carriers without having to check in their baggage more than once.[25] This offers a smooth experience for the consumer and adds to the value of the services provided by the alliance.

Another important attribute of an alliance is that it allows an airline to expand its route network thereby increasing the number of destinations it flies to and from.[26] As in the example above, a passenger's single itinerary includes different connecting airports and with different carriers.[27] Carriers are able to market their flights under the alliance brand.

An alliance may be entered into or established for either "tactical" or "strategic" reasons.[28] The tactical alliances are meant to provide reciprocal access to each carrier's network and usually between two carriers where either one is or both of which are often not a part of a larger strategic alliance.[29] An example of such an alliance is the American/jetBlue Interline and Reciprocal Frequent Flyer Accrual Agreement which was terminated in 2014.[30]

This agreement allowed "travelers to make connections between 26 domestic markets and 15 international destinations" by purchasing just one ticket.[31] However, the trend for carriers which offer international services is to join branded strategic alliances such as the 'Big Three" (Star Alliance, SkyTeam and Oneworld).[32]

These IAAs aim to achieve a wide network which covers as much worldwide routes as possible and these alliances have evolved to cover varying degrees of cooperation[33] which shall be discussed. It is important to note that even though alliance partners are in cooperation they may still be in competition with one another depending on the level of cooperation.[34]

It is the form of cooperation which virtually eliminates competition between carriers that has raised concerns regarding competition and has had competition authorities scrambling to apply regulatory standards. The main concern is that once competition is eliminated between carriers there is no incentive to keep prices at a consumer-friendly level and the creation of oligopolies stifles consumer benefits.[35]

Lu notes that in the absence of a truly multilateral air traffic exchange regime, fully liberal air transport

[22] Ridha Aditya Nugraha, "Legal Issues Surrounding Airline Alliances and Codeshare Arrangements: Insights for the Indonesian and ASEAN Airline Industries," *Indonesian Law Review* 8(1) (2018): 37-38. Nugraha notes that there was a string of airline bankruptcies in the United States due to a lack of funders who possessed both the required capital and capacity to meet the requirements.

[23] Scott Kimpel,"Antitrust Considerations," 476.

[24] Simons, Michael S. "Aviation Alliances: Implications for the Qantas-Ba Alliance in the Asia Pacific Region," *Journal of Air Law & Commerce* 62(3) (1997): 841-842.

[25] *Ibid.*

[26] Nerja, Adrián. "Can parallel airline alliances be welfare improving? The case of airline–airport vertical agreement," *Transportation Research Part A: Policy and Practice* 167 (2023): 103: Stephen W. Wang,. "Do Global Airline Alliances Influence the Passenger's Purchase Decision?" *Journal of Air Transport Management* 37 (2014): 54.

[27] *Ibid*.

[28] TransAtlantic Airline Alliances: Competitive Issues and Regulatory Approaches, A Report by the European Commission and the United States Department of Transportation [16 November 2010] 4 (hereinafter Joint TransAtlantic Report).

[29] *Ibid*.

[30] *Ibid*.

[31] Ben Mutzabaugh. "American, JetBlue terminating Frequent-Flyer Pact." USA Today, March 10, 2014. Accessed 30 September 2025, https://www.usatoday.com/story/todayinthesky/2014/03/10/american-jetblue-terminating-frequent-flier-pact/6251545/.

[32] Joint Trans-Atlantic Report. Currently the Star Alliance has 26 member airlines and a network encompassing 1300 airports while the Sky Team Alliance has 19 members with a reach of 1 150 destinations worldwide and the One World Alliance is composed of 13 airlines with a reach to destinations in over 160 countries.

[33] *Ibid*, 4 e.g. cooperation on lounge access.

[34] *Ibid*, 5

[35] Morrish and Hamilton discuss the effect alliances have on the conduct of airlines in S. C. Morrish and R. T. Hamilton, "Airline Alliances—Who Benefits," *Journal of Air Transport Management 8* (2002): 401.

service cannot be realized.[36] IAAs are an alternative and also a useful tool to bypass cabotage restrictions.[37]

Lu also notes that these arrangements are not always smooth as partners sometimes switch between alliances for various reasons and sometimes an alliance is not always the most efficient and profitable way of operating for airlines.[38]

Alliances are scrutinized for the potential harm they might have on competition depending on the type of cooperation they have agreed upon and the carriers involved.[39] It has been argued that code sharing agreements are the most controversial.[40]

On the other hand, it can be argued that IAAs are evidence of a recognition by carriers of the cooperation that is required for the benefit of the aviation industry as well as the consumers and governments have not yet been able to effectively secure such cross-border cooperation regarding liberalization due to the complex and restrictive nature of bilateral agreements.

IAAs try to simulate the conditions that would prevail if the aviation industry was fully deregulated and treated the same way as other commercial activities. As such, there is a broad spectrum of opinions regarding whether alliances have a positive or negative effect on competition. Their continued existence however shows an acceptance by the States that these arrangements have proven useful to some extent while arguments against them are also evidence that at times IAAs have had a harmful effect on competition in the aviation industry.

It is notable that a uniform approach to competition issues in this area on a multilateral level would result in uniform results which would make an assessment of the impact of IAAs clearer.

5. ANTI-COMPETITIVE BEHAVIOR IN AVIATION

A liberalized market requires regulations that ensure that the principles of fair competition are upheld. As such, competition and consumers in the aviation market need to be sheltered from certain practices which have an adverse effect on them.[41] These practices are usually carried out by airlines which have a dominant position on the market and these airlines may act in concert with other airlines as in alliances or mergers or they may act unilaterally.[42]

Cooperative arrangements between competing airlines may have the effect of eliminating competition between those airlines and giving them an even more dominant position on the market. Without the threat of another airline capable of challenging them, they are able to set very high fares which are harmful to consumers. Furthermore, consumers end up with less choices of service.

Dominant airlines also possess the capability to engage in practices aimed at blocking potential new airlines from entering the market. For example, they may charge such low fares for a while in order to undermine a new airline's competitive edge and then raise them once that new airline becomes bankrupt and continue being profitable. In this way they maintain their dominance and consumers lose out in the long run because of the distorted competitive environment which does not force that airline to keep prices at a certain level.[43]

Dominant airlines may also restrict access to

[36] For example, Angela Cheng-Jui Lu addresses the differences between European Community Competition Laws and United States antitrust laws and their application to IAAs: A. Lu, "International Airline Alliances: EC Competition Law, US Antitrust Law, and International Air Transport," *Annals of Air and Space Law* 27 (2002): 401, 412. Also see Michaela Císová, "Remedies in EU and US Merger Control" (2024), accessed 30 September 2025, https://dspace.cuni.cz/handle/20.500.11956/193050.

[37] *Ibid,* 408.

[38] *Ibid*. This can be seen in the termination of the Frequent Flyer Pact between American and JetBlue (n 30). Various reasons contributed to the ending of this partnership one which was the growing competition between the two airlines themselves and reports showing the partnership had stopped being profitable for both sides. In this instance, it became a question of whether to maintain the acquired consumer benefits or seek more profitable avenues of operation. This is always a balance that must be kept in mind by airlines because in assessing alliances competition authorities will usually study the potential benefits to the consumers against the competitive effects of unlimited profits.

[39] Xiaoqian Sun, Changhong Zheng, Sebastian Wandelt, and Anming Zhang, "Airline Competition: A Comprehensive Review of Recent Research," *Journal of the Air Transport Research Society* (2024): 100-13; see also Tae Hoon Oum, Chunyan Yu, and Anming Zhang, "Global Airline Alliances: International Regulatory Issues," *Journal of Air Transport Management* 7(1) (2001): 57.

[40] *Ibid*.

[41] Kate Markvhida, "Antitrust and Competition," 312.

[42] *Ibid*.

[43] This predatory behaviour according to Goetz is designed to send a message by the incumbent airline to new entrants that entry to the market will be dealt with harshly and swiftly. Predatory is behaviour of this nature is prohibited by

facilities at hub airports and this becomes a significant barrier to entry. Availability of slots is one relevant example. It is the goal of competition law to advance economic efficiency by preventing such practices.[44] This goal is achieved by taking into account *inter alia* the following factors:

1. Demand curves and consumer and producer surplus;[45]
2. Elasticity of demand;[46]
3. Cross-elasticity of demand;[47]
4. Profit maximization;[48]
5. Economies of scale and scope.[49]

Markvhida categorizes potential anti-competitive behaviour in the airline industry into three groups.[50] Of these three groups two concern cooperative arrangements by airlines and the third one is unilateral actions by dominant airlines. The practices are "airline mergers, acquisitions and cross border alliances, collusion between competing airlines and exclusionary conduct by a dominant airline."[51]

In most States, the typical competition legislation is applied to airlines while some countries have specific institutions responsible for the application of competition law to airlines especially in the area of granting certain exemptions to the enforcement of these competition rules to airline alliances.

In New Zealand, for example the Commerce Act 1986 deals with competition issues and while it does not contain provisions specific to aviation related exemptions, the Commerce Commission in practice may approve such exemptions.[52] However, in the United States there is a special regulatory framework for reviewing international alliances and the statutory authority is vested in the DOT.[53]

When the competent competition law authorities assess the potential anti-competitive practices of airlines on the market, they have to consider what is referred to as the relevant market and this is divided into the geographic market and the product market.[54]

The ECJ had determined that determining the relevant market is a precondition in assessing the effect of concentration on competition.[55] As a starting point, defining the market allows the relevant authorities to have a picture of the potential effects a certain practice might have on the market as a whole particularly how much market share an undertaking will gain if it proceeds i.e. market power.

This particular court defines the relevant market in terms of substitutability and interchangeability which means that competition between products which form part of the market may be observed.[56] The Commission Notice on the Definition of the Relevant Market for the Purposes of Community Competition Law (hereinafter the Commission Notice) defines the product market similarly to the ECJ.[57] The geographic market is defined as the area where the supply and demand of services takes place.[58]

In the aviation industry the two parts of the relevant market definition are interlinked because the product (air services) involves movement to a geographical location.[59] Airline alliances are scrutinized by competition authorities because these

competition laws for example the Federal Aviation Act in the United States. R. G. Goetz, "Deregulation, Competition and Antitrust Implications in the US Airline Industry." *Journal of Transport Geography* 10(1) (2002): 1-19.

[44] Jones, A., and Sufrin, B, *EC Competition Law: Text, Cases, and Materials*, 8th ed. (Oxford University Press, 2019), 3.

[45] *Ibid*; the relationship between the consumer's willingness to pay (reservation price) and the quantity that will be bought across the market as a whole. There are less consumers who are willing to pay high prices than there are those who are willing to pay low prices.

[46] *Ibid,* 4; whether an increase in price leads to an inappreciable fall in demand (inelastic) or to a substantial fall (elastic).

[47] *Ibid,* 5; how much the demand of a product increases when another product's price increases.

[48] *Ibid,* 5; there is an expectation for firms to be rational actors who behave in a way that maximizes their profits.

[49] *Ibid,* 6; when the average cost of production decreases as more is produced.

[50] Kate Markvhida, "Antitrust and Competition," 312.

[51] *Ibid*.

[52] See for example Ministry of Transport, Air New Zealand/Cathay Pacific Alliance Reauthorization Analysis, August 2019. Accessed 30 September 2025. https://www.transport.govt.nz/assets/Uploads/Report/2019-Cathay-Air-NZ-alliance-full-report.pdf.

[53] Kate Markvhida, "Antitrust and Competition," 312.

[54] *Ibid*.

[55] Case C-68/94 *France v Commission* [1998] ECR I-1375.

[56] Case 85/76 *Hoffman-LaRoche & Co AG v Commission* [1979] ECR 461.

[57] European Commission, *Commission Notice on the Definition of Relevant Market for the Purposes of Community Competition Law*, (1997) OJ C372/5.

[58] Jones and Sufrin, *EC Competition Law*, 64.

[59] Kate Markvhida, Antitrust and Competition," 312.

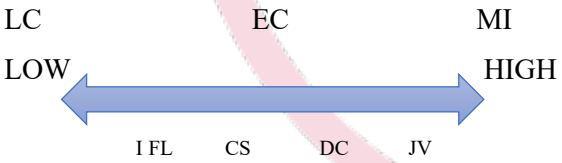
cooperative arrangements between airlines result in significant market power which may lead to anti-competitive behavior. The impact alliances have on competition is related to the level of cooperation between airlines that is required by the agreement.

5. LEVELS OF COOPERATION

Generally speaking, alliance agreeements have been known to cover one or more of these areas: (1) interlining, (2) frequent flyer programs (hereinafter FFP) and lounge access, (3) code sharing, (4) direct coordination (this includes prices, routes, scheduling facilities, etc) and (5) revenue, cost and benefit sharing ventures.

The Trans-Atlantic Joint Report draws a "spectrum of alliance cooperation" which shows that the type of agreement differs depending on the level of integration of the carrier's operations i.e. from: (a) limited cooperation on specific routes to (b) expanded cooperation to develop joint network and (c) merger-like integration.[60] The more integrated the operations of the carriers become the more they begin to resemble a merger.

DOT Spectrum of Alliance Cooperation[61]



*LC – Limited Cooperation

*EC – Expanded Cooperation

*MI – Merger-like Integration

*I – Interlining

*FL – FFP and Lounge Access

*CS – Code Sharing

*D – Direct Coordination

*JV – Joint Venture

6. CODE SHARING AGREEMENTS

These types of agreements are a very common feature of IAAs. For example, the Star Alliance involves a code sharing agreement. Code sharing is when an air carrier (operating carrier) uses the designator code of another air carrier (marketing carrier) in performing its own operations.[62] Code sharing agreements are mainly about marketing not establishing new flights *per se* as each airline carries on operating the same flights it had been operating before.[63]

Code share agreements work through computer reservation systems (hereinafter CRS) which treat flights under the code share agreements as online connections of a higher priority than interline connections.[64] A carrier is able to market a certain amount of seats on another carrier's flight. These agreements may be supplemented by other arrangements such as coordination of FFPs.[65]

Competition implications have to be taken into account by the competent authorities of the States where code share agreement approval is being sought. The problem becomes apparent where the airlines entering into this type of agreement are actual or potential competitors and this agreement seeks to eliminate or restrict this competition to an extent that it may affect potential third party competitors.

One concern for competition authorities when assessing airline's cooperative arrangements is the risk of coordinated anticompetitive behaviour by the airlines. These worries are concerning agreements established on an exclusive basis which it can be argued, may lead to a coordination of fares contrary to fair competition principles or these agreements may become a barrier to entry for potential new entrants as they may prevent access to certain routes

[60] Joint Trans-Atlantic Report, 5.
[61] *Ibid*.
[62] ICAO definition, accessed 30 September 2025, https://www.icao.int/dataplus_archive/documents/glossary.docx.
[63] Emilia Chiavarelli, "Code-Sharing: An Approach to the Open Skies Concept," *Annals of Air and Space Law* 20 (1995): 195. For a discussion on how politics also interacts with open skies arrangements see Tyler B. Spence, Steven M. Leib, "Negotiating International Aviation: Analyzing the Contribution of Politics to the United States' Open Skies Agreements through Democratic Peace Theory," *Journal of Air Transport Management* 115 (2024), accessed 15 September 2025, https://www.sciencedirect.com/science/article/abs/pii/S0969699723001552.
[64] *Ibid*.
[65] Tobias Grosche, and Richard Klophaus. "Codesharing and Airline Partnerships Within, Between and Outside Global Alliances," *Journal of Air Transport Management* 117 (2024), accessed 30 September 2025, https://doi.org/10.1016/j.jairtraman.2024.102591.

from those airlines mainly in the presence of slot constraints.

Code share agreements allow airlines access to global markets which they would otherwise not have access to due to aviation restriction. While this may be beneficial for the airlines who have entered the agreements because they aquire more destinations and frequencies, the impact on fares and service levels may be negative for the consumer e.g. where the airlines of the three major United States alliances account for about two thirds of the domestic origin and destination (O & D) passenger traffic.[66]

While there has been significant agreement regarding the fact that code share agreements on the international market have had a positive effect of lowering fares and increasing passenger traffic, there were fears that on the domestic market level the effect on consumer welfare might not be the same due to a distinction between traditional and virtual code sharing.

Traditional code-sharing refers to the agreement between airlines serving international markets to combine their networks through code-sharing for reasons of creating a seamless travel itinerary for the passengers i.e. an itinerary from a flight under such an agreement would involve a connection between airline A and airline B where the entire ticket is marketed by airline A.

Virtual code-sharing on the other hand refers to when an itinerary involves a connecting flight using the same airline which for the purposes of this example is airline A where the entire ticket is marketed by airline B.[67] A marketing carrier is paid a fee by the operating carrier, but it is the operating carrier who gets most of the revenue from ticket sales.[68]

Another distinction in code-share agreements concerns the amount of seats available on the operating carrier's flight to the code share partner. Under a free flow agreement, the operating carrier has a discretion to decide seat availability and the marketing carrier acts similarly to an agent which means the operating carrier assumes all of the risk and compensation may be decided in unique pro-rata agreements.

In blocked space agreements, there is a set percentage or number of seats available to the marketing carrier on the operating carrier's flight and this can be under a hard agreement where both bear the risk and the marketing carrier has to pay the agreed upon amount regardless of whether they sell the blocked seats or it can be under a soft agreement where the marketing carrier has an option to return the seats based on a prior agreement.

Several other distinctions may be observed in terms of the extent of network overlap.[69] The EU approves a code share after applying a two-pronged test which asks whether the agreement results in anti-competitive effects and if so to what extent the expected economic benefits outweigh these potential anti-competitive effects.[70]

This two-pronged test will be discussed in more detail when the granting of immunity from competition law enforcement to airlines is discussed. Suffice it to say, the impact of code-share agreements on competition depends on various factors which include the type of code-share agreement, the extent to which the code-share partners were in competition prior to the agreement, the extent to which the code-share agreement reduces competition between the carriers involved, the impact the code-share agreement has on third party carriers and the level of benefit it provides to the consumers.

Furthermore, it must be noted that it might be difficult to ascertain the full impact of these and many other cooperative arrangements between airlines due to the unique nature of the aviation industry itself. State involvement in aviation means there will always be political connotations to the industry. For example, Qatar Airways blamed a sixty-five-million-dollar loss on a Gulf dispute that erupted in 2017.[71]

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[66] Jules Yimga, and Javad Gorjidooz, "Airline Code-Sharing and Capacity Utilization: Evidence from the US Airline Industry." *Transportation Journal* 58(4) (2019): 280, accessed 30 September 2025, https://doi.org/ 10.5325/ transportationj.58.4.0280.

[67] *Ibid*.

[68] *Ibid*.

[69] Tae Hoon Oum, Chunyan Yu, and Anming Zhang. "Global Airline Alliances: International Regulatory Issues," *Journal of Air Transport Management* 7(1) (2001): 57.

[70] *Ibid*.

[71] Reuters, "Qatar Airways blames $69 million annual loss on Gulf dispute," September 18, 2018, accessed 30 September 2025, https://www.reuters.com/article/us-qatar-airways-results/qatar-airways-blames-69-million-annual-loss-on-gulf-dispute-idUSKCN1LY0N1.

Further illustration of the geo-political nature of the aviation industry is the state of the aviation industry in the wake of the September 11 terrorist attacks which were preceded by the 'dot.com bubble burst.'[72] The United States closed off its airspace and consequently recorded a decline in passenger traffic, recorded a decline in domestic market demand, experienced a revenue decline from airlines and a significant reduction in employment in the aviation industry.[73] These developments led to the passing of the United States Air Transportation Safety and System Stabilization Act to compensate airlines for losses incurred during the shutdown.[74] These negative phenomena could be observed on a global level as well.[75]

These geo-political events influence the direction of the aviation industry and how governments respond have far-reaching implications. This is why it can be argued that competition in the aviation sector has to be defined differently from other commercial activities.

While airlines and consumers may benefit from airline deregulation, they are also protected by government regulation which may *prima facie* appear to go against liberal principles. Competition in the aviation industry cannot go unchecked or unguided by politics hence it may be argued that a case-by-case assessment when it comes to code-share agreements may be favourable against specific legislation but uniformity in this case-by-case approach is what several scholars argue is needed.

Code-share agreements in international markets have been generally accepted as not exhibiting excessively anti-competitive effects with one exception of a decrease in competition between code-share partners on parallel operated routes.[76] An increase in capacity and decrease in fares has also been observed as a result of code-share agreements where entry by new airlines may be made very difficult.[77]

A report by Steer Davies Gleave[78] recommends an approach to determining the anti-competitive nature of code-share agreements based on:

1) The underlying geography of the agreement;[79]

2) The features of the agreement and its connected agreements;

3) Market Definition;[80]

4) Market Characteristics.

Code-share agreements may be good for competition, or they can be bad. Theoretically speaking, if an airline is dominant on one end of a route then if an airline in direct competition with that airline enters into a code-share agreement with another airline at that end of the market then it increases its competitiveness on that route.[81] On the other hand, code-share agreements may mean that new entrants have to compete with two airlines who dominate both market ends of a route making the code-share a significant barrier to entry.[82]

7. IMMUNITY

Due to the above-mentioned potential effects that cooperation between airlines may have on competition, it has become common for alliances to

[72] IATA, "The Impact of September 11, 2001, on Aviation," accessed 30 September 2025. https://www.iata.org/pressroom/documents/impact-9-11-aviation.pdf.
[73] *Ibid*.
[74] US Congress, Air Trasnportation Safety System Stabilization Act, Public Law 107-42, 115 Stat. 230 (2001), accessed 30 September 2025, https://www.congress.gov/107/plaws/publ42/PLAW-107publ42.pdf.
[75] The Impact of 9/11 reduction in global traffic and global airline revenue, significantly reduced profitability levels for airlines which led to bankruptcies and a spike in oil prices.
[76] These code-share agreements allow airlines to gain significant market power due to the increased frequency they offer.
[77] Code-share agreements tend to be anti-competitive when they are concluded on an exclusionary basis which restricts access by other carriers.
[78] Steer Davies Gleave, *Competition Impact of Airline Code-share Agreements Final* Report (January 2007) prepared for European Commission Directorate General for Competition.
[79] Whether it is a parallel operation, a unilateral trunk operation or a behind and beyond codeshare. A parallel codeshare is when two airlines which provide air services on the same route agree to sell tickets and put their code on the other carrier's flight. In a unilateral codeshare an airline offers service to a destination when it actually does not provide air services on that route but its partner in the codeshare does. Behind and beyond codeshares are arrangements between partners to offer connecting flights from destinations that they operate on hence passengers reach more destinations on the same booking code. Martin Servin Almkvist, "Code-share Agreement – A way to Gain Market Power and Raise Airfares? An Investigation of the Effect of Code-share Agreements on the European Airline Market." Bachelor's thesis, Södertörn University, 2014, 8-9.
[80] This shall be discussed under anti-trust immunity.
[81] Steer Davies Gleave Report,72.
[82] *Ibid*.

seek immunity from competition law enforcement in order to effectively engage in the form of partnerships they seek. This is because by nature, alliances involve concerted efforts to achieve efficiency and profitability which are not entirely based on pure market forces.

The principal reason for establishing alliances has been the restrictive nature of bilateral air transport agreements which presents itself in the form of nationality clauses that prevent foreign airlines from accessing domestic markets. Furthermore, restrictions on cabotage limit an airline's expansion requirements.[83]

Alliances have been said to have been originally meant to allow members to cross-sell each other's tickets.[84] Additionally code-sharing enhances an airline's brand recognition, and the partnership increases an airline's access to its partners' feeder traffic[85] and also enable the airlines to attract more corporate customers.[86]

A collective investment also allows alliances to develop better technology and carry out research which would be too expensive for a single airline to carry out on their own and thus improving their competitiveness and the aviation industry generally as well.[87]

Airlines in an alliance require immunity from ordinary competition law enforcement to allow them to engage in competitively delicate practices such as collusion on prices and service levels. Without this immunity, the alliance would be prevented from carrying out these practices by the ordinary competition law rules hence the alliance would be pointless.

For example, collusion on pricing in other commercial activities outside aviation would be considered a violation of Section 1 of the Sherman Antitrust Act in the United States.[88] As already noted, an alliance may allow partners to agree on set prices and while this may be a *prima facie* violation of competition rules, alliances may be exempted from competition enforcement by the competent authorities.

Due to wide acceptance of the benefits to the aviation industry that have been gained from alliances, the competent authorities have to perform a balancing act between the potential benefits and the potential negative effects on competition an alliance may pose. This analysis focuses on the impact the alliance may have on prices or service quality.[89]

This analysis is either carried out by the relevant authorities under a separate regime or under typical merger and cartel provisions of the usual competition laws.[90] As alliances tend to express merger-like qualities with increasing cooperation as illustrated by the DOT spectrum of alliance cooperation it may be argued that the rules regulating mergers may be applied to them.

Mergers are regulated in order to pre-empt firms from establishing dominant positions on the market which are detrimental to effective competition. Cartel provisions prohibit agreements aimed at restricting competition. These agreements may be

[83] Lykotrafiti, Antigoni. "Regulatory Convergence Between U.S. Antitrust Law and EU Competition Law in International Air Transport—Taking Stock." *Journal of Competition Law & Economics* 19(1) (March 2023): 146, accessed 30 September 2025. https://doi.org/10.1093/joclec/nhac013. Compare this with earlier arguments in Gillespie, William, and Oliver M. Richard. "Antitrust Immunity Grants to Joint Venture Agreements: Evidence from International Airline Alliances," *Antitrust Law Journal* 78(2) (2012): 443, 445.

[84] Volodymyr Bilotkach and Kai Huschelrath, "Antitrust Immunity for Airline Alliances," *Journal of Competition Law & Economics* 7(2) (2011): 335, 342. Also see Kenneth Button, "Code Sharing, Airline Alliances, and Other Forms of Airline 'Cooperation' in Developing Countries" in *Airlines and Developing Countries*, edited by Kenneth Button, Leeds: Emerald Publishing Limited, 2023, 153. (https://doi.org/10.1108/S2212-160920230000010009), accessed March 30 September 2025.

[85] Feeder airlines are those airlines which connect passengers off the main line with the main line and usually using short routes. It means they carry passengers' short distances to get them to a hub where they can catch a connecting flight to a longer distance. John H. Frederick and William J. Hudson. "What Is a Feeder Airline?" *Journal of Air Law and Commerce* 13(1) (1942): Article 4, accessed 30 September 2025, https://scholar.smu.edu/ cgi/viewcontent.cgi?article=3293&context=jalc. Feeder traffic can also be obtained on the basis of the IATA Prorate Agency Agreement or a bilateral agreement between airlines.

[86] Joint Trans-Atlantic Report, 8.

[87] Joint Trans-Atlantic Report, 9.

[88] The Sherman Antitrust Act of 1890 (26 Stat. 209, 15 U.S.C. §§ 1–7) amended by the Clayton Act 1914. In Broadcast Music, Inc. v. CBS, Inc., 441 U.S. 1 (1979), No. 77-1578. the Court found that a practice has to be one that always tends to restrict competition and decreases output for it to be considered *a per se* violation. This was in relation to a test for price fixing.

[89] Kate Markvhida, "Antitrust and Competition," 318.

[90] *Ibid*.

horizontal meaning between two competitors on the same level of the supply chain or vertical as between a manufacturer and a distributor.[91]

Cartels are formed when two or more competing independent firms enter into an agreement to fix prices and share customers and limit production thereby eliminating competition between them and removing an incentive to improve services as well as the product.[92]

Since alliances more or less are established to carry out said illegal practices, in the United States alliances have to seek immunity from the DOT while in the EU approval is given by the Commission.

8. THE DOT APPROACH

A prerequisite for receiving antitrust immunity for an international alliance from the DOT is the existence of an "open skies' agreement between the United States and the foreign airline's country.[93] Under the US-EU Air Transport Agreement for example, both parties commit to removing market barriers to entry in the interests of maximizing consumer benefits through opening up domestic air markets to global capital.[94]

In assessing the proposed airline alliance, the DOT uses a public policy test. This test analyses whether the alliance violates the antitrust laws and has a negative effect on competition and the benefits to be gained by it on a public welfare perspective.[95]

The request for immunity begins with a formal application in a public docket which is decided on after a thorough and open competition analysis by the Secretary of Transportation.[96] Public comments are invited after the application is "substantially complete" and a decision has to be made within a six-month time frame.[97]

The DOT has the discretion to approve agreements which may significantly reduce competition provided the agreements are needed to fulfil a sufficiently important transportation or consumer welfare related need and these needs cannot be met by any reasonable less anti-competitive means.[98]

Domestic alliances in the United States however generally do not enjoy this immunity grant and the DOT does not enjoy the same jurisdictional authority in this instance as it does regarding international alliances.[99] While the Department of Justice (DOJ) has authority to review domestic alliances under merger provisions when it comes to international alliances the DOJ acts in an advisory capacity.[100]

The DOT approach to granting immunity is noteworthy for the following factors according to the OECD:

1. The process is transparent whereas in several jurisdictions these proceedings are carried out in private.

2. The broad public policy test allows the DOT to consider a wider range of factors such as a free trade agenda in addition to the competition principles whereas other jurisdictions such as Canada employ a purely competition law test.

3. The DOT employs an *ex-ante* review of an alliance to protect it from enforcement from private and public actions whereas in other jurisdictions an *ex-post* review is used to challenge an alliance once

[91] EUR-Lex Glossary of Summaries, accessed 30 September 2025, https://eur-lex.europa.eu/summary/glossary/ antitrust. html.

[92] European Commission, "Competition: Cartels Overview," accessed 30 September 2025, http://ec.europa.eu/competi tion/cartels/ overview/index_en.html.

[93] Hand, William. "Continental Joins the (All)Star Alliance: Antitrust Concerns with Airline Alliances and Open-Skies Treaties," *Houston Journal of International Law* 33(3) (2011): 649, 656.

[94] EU-US Air Transport Agreement of April 30, 2007, amended by the Protocol of 24 March 2010 Article 21.

[95] Kate Markvhida, "Antitrust and Competition," 319.

[96] U.S. Department of Transportation, *Procedures for Review of Agreements Filed Pursuant to 49 U.S.C. 41308*, 14 C.F.R. – 303.03(b) (2025). "When the Secretary of Transportation decides it is required by the public interest, the Secretary, as part of an order under section 41309 or 42111 of this title, may exempt a person affected by the order from the antitrust laws to the extent necessary to allow the person to proceed with the transaction specifically approved by the order and with any transaction necessarily contemplated by the order."

[97] U.S. Congress, *International Air Transportation Competition Act of 1979*, Pub. L. No. 96-192, 94 Stat. 35 (1980), codified at 49 U.S.C. – 41710 on Time Requirements.

[98] Joint Trans-Atlantic Report, 13.

[99] OECD International Transport Forum, *Air Service Liberalization and Airline Alliances: Country-Specific Policy and Analysis*, 2014, 58-59, accessed 30 September 2025, https://www.itf-oecd.org/sites/default/files/docs/14air serviceagreements.pdf.

[100] *Ibid* 59.

it has been concluded by airlines.[101]

Anti-trust immunity conferred upon international alliances may adversely affect customers in Trans-Atlantic overlaps and in order to maintain competition in these overlap areas, the DOT employs the "carve out" technique which means these overlaps were not included in the immunity grant.[102]

In these overlap areas, the airlines in partnership remain in competition. They cannot collude on prices on the carved-out route and if they do it would be illegal, and they would be open to anti-trust enforcement because the grant of immunity does not specifically apply to that route.[103]

Airlines challenge the carve out system on the basis that it disrupts their ability to provide benefits to connecting passengers by prohibiting coordinated practices between certain routes.[104] It is also argued that carve outs present unnecessary cost expenditures related with serving passengers on an "individual carrier' basis which is what an alliance hopes to eliminate in the first place.[105]

It must be noted that these carve outs may be viewed as a compromise between the DOJ which has an interest in protecting the interior air transport market competition and the DOT which works with wider foreign policy considerations. Carve outs are applied where competing airlines offer non-stop flights between two cities and a reduction in competition would result in adverse effects on time sensitive travellers.

The DOT is only mandated to grant antitrust immunity only as far as is necessary for the alliance to proceed if it is found to be in the interest of the public.[106] However, the DOT has been accused of granting immunity on a purely political basis e.g. the Northwestern/KLM and the American Airlines/British Airways alliances which some argued were granted for the advancement of the open-skies policy without due regard to the statutory requirements laid down in the DOT's mandate.[107]

These accusations seem to be in line with the DOT's approach since the inception of the open skies era of advancing the liberalization agenda at the expense of some form of immediate material gain or in this case legal principle.

In fact, in the American Airlines/British Airways case, the DOT employed manipulative legal practices to induce the United Kingdom to create a "de facto" open skies agreement with the United States by allowing access to Heathrow Airport.[108]

9. THE EU APPROACH

The assessment of international alliances in the EU is carried out by the Commission applying EU competition rules found in Articles 101 and 102 of the TFEU. This assessment uses an approach almost similar to the one used by the DOT.

Once it is established that an agreement is anticompetitive as defined in Article 101(1) TFEU[109] it can be allowed to proceed provided it "contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair

[101] *Ibid,* 60.

[102] Edelman, Jonathan. "Reviving Antitrust Enforcement in the Airline Industry," *Michigan Law Review* 120(1) (2021): 125, accessed 30 September 2025, http://www.jstor.org/stable/45418832.

[103] Examples of carve outs can be seen in immunity grants to the United –Lufthansa alliance in 1996 and the Delta-Air France-A1 Italia alliance in 2002.

[104] Edelman, "Reviving Antitrust."

[105] *Ibid*.

[106] G. S. Sanchez, "An Institutional Defense of Antitrust Immunity for International Airline Alliances," *Catholic University Law Review* 62,(1) (2012): 140, 156.

[107] Ibid,162. Brian F. Havel, *Beyond Open Skies: A New Regime for International Aviation*, 2009, 287-293. Also see Marko Stilinović and Dino Gliha, *Code-Sharing Agreements and Competition Protection in the European Union*, Zagreb: Pravni fakultet Sveučilišta u Zagrebu, 2017, 559-582, accessed September 30, 2025, https://www.croris.hr/crosbi/publikacija/prilog-skup/703611.

[108] Sanchez, "An Institutional Defense of Antitrust,"163.

[109] "The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which: (a) directly or indirectly fix purchase or selling prices or any other trading conditions; (b) limit or control production, markets, technical development, or investment; (c) share markets or sources of supply; (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts."

share of the resulting benefit" and it does not:(a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives; (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question."[110]

Similarly, abusive practices by a dominant firm are prohibited under Article 102 but can be objectively justified and if so they have to be proportionate.[111] The Commission may initiate an investigation into the competition effects of alliances on its own discretion and is jointly responsible for the enforcement of competition rules with the Member States as the European Competition Network (ECN).[112]

Alliance partners may provide the Commission with commitments which modify their alliance agreement to pre-empt potential anti-competitive effects, and such commitments include those submitted in the Sky Team Alliance (Aeromexico, Air France, Alitalia, Continental, CSA, Delta, KLM, Korean Air and Northwest)[113] case which included:

1. Availing slots at EU airports for new competitors.

2. Sharing FFPs with new competitors if need be.

3. Making room for interline agreements with new competitors to allow them to offer round trips.

4. Negotiating special prorate agreements for behind and beyond traffic.[114]

These proposals submitted by the parties were in line with a standard remedy package established by the Commission to counter potential anti-competitive effects from airline alliances i.e. slot divestitures, access to joint FFPs, regulatory measures and other remedies e.g. limiting price levels to avoid predatory pricing.[115]

10. CONCLUSION

Deregulation of the aviation industry is an on-going process. This is due to the fact that the State plays a prominent role in aviation. This is primarily seen through bilateral negotiations of the exchange of air traffic rights. This system allowed States to exchange the freedoms of the air on a reciprocal basis.

It may be argued that this system presents more fairness than the deregulation regime because States get as much as they give while the discussion above shows that open skies agreements largely work in the favour of technologically advanced countries who have a need to expand their airline networks to maximise profits.

While evidence has been discussed showing that airline alliances may pose a substantial threat to competition there is no agreement as to the conclusiveness of this evidence. Furthermore, competition authorities from major aviation countries such as the United States and the EU are of the opinion that the aviation sector will be better served by allowing fair competition to thrive.

However, these same competition authorities have had to apply tests which are outside the scope of the competition considerations when assessing the conduct of airline alliances. As already mentioned, the DOT has been accused on numerous occasions of exceeding its statutory mandate by pursuing political goals.

Even in the EU, nationalization clauses were prohibited as being anti-competitive after significant resistance by the Member States who were wary of ceding their bilateral negotiating autonomy to the supranational body. Agreement as to how much the EU should encroach on Member States's sovereignty in the pursuit of its single market integration goals is not unanimous.

The United States, the early proponents of deregulation, have a history of bowing to the demands of domestic airlines and using their considerable influence in the aviation industry to secure their dominance over it. As has been seen by the admissions of the early proponents of the

[110] European Union, *Consolidated Version of the Treaty on the Functioning of the European Union*, art. 101 (3), [2012] OJ C 326|47.
[111] Joint Trans-Atlantic Report, 15.
[112] *Ibid*.
[113] European Commission, "Competition: Commission Confirms Sending Statement of Objections to members of SkyTeam Global Airline Alliance," MEMO/06/243.
[114] Behind traffic is "airline traffic connecting at the origin airport of an O&D pair" and beyond traffic is "airline traffic connecting onward from the destination of an O&D pair" (O &D pair is "the route between an origin airport and a destination airport"); OAG Traffic Analyzer-Glossary, accessed 30 September 2025, http://cdn2.hubspot.net/hubfs/490937/Product_help_pages/Traffic_Analyser/TA_Glossary.pdf?t=1470149038800.
[115] Baronnat, E. "EC Antitrust Control of the SkyTeam Alliance," *Issues in Aviation Law and Policy* 2004-2008, 42-58.

deregulation doctrine, more studies are required to determine whether deregulation is much better than a heavily regulated aviation industry.

Other States take pride in their government owned airlines hence these airlines enjoy a competitive advantage through state aids which are illegal in certain jurisdictions such as the EU. This disadvantages other airlines on an international scale but the argument as to the illegality of state aids in this context has to be had taking into account government policy considerations.

Considerable agreement seems to centre around the fact that there needs to be a multilateral approach to aviation competition. This is apparent when discussing the legal scrutiny of airline alliances in relation to their potential effects on competition. A truly multilateral approach on the same scale as the Chicago Conference seems unlikely but cooperation can be achieved at regional levels albeit delicately as can be seen through the Trans-Atlantic Joint Report.

While aviation deregulation has indeed resulted in considerable benefits to the consumer and development of the aviation sector, several States are not willing to lessen the impact of the sovereignty over airspace principle which allows them to impose protectionist laws that prohibit cabotage and direct foreign investment. The substantial ownership provisions are a major example of this.

These provisions have been the main reason of the emergence of airline alliances, and it seems airline alliances are forming a unique body of competition law which requires strenuous economic analysis. This can be seen in the granting of immunity from enforcement of competition law rules.

Granting immunity seems to be an admission that sometimes anti-competitive behaviour is acceptable in light of the benefits that can be had especially in the case of airline alliances, and this is evidenced by the frequency of immunity granted to these alliances.

When it comes to the granting of this immunity, States have different procedures and different competent authorities to carry out the task. It is in this area that the need for a harmonisation of rules on a multilateral level is apparent. A unified approach would ensure that this immunity is granted in a way that is acceptable to States and would likely lead to more cooperation regarding aviation regulation.

Truly open skies have not yet been achieved, and it is debatable whether they will ever be. After making a commitment to deregulation a decade earlier, Africa seems to be still in the same protectionist framework. The issue of the Gulf Carriers shows that some States do not believe in fair competition as it is envisaged by the invisible had theory.

There are cases of government bailouts in the aviation industry as well because of its unique function of connecting countries to the outside world. It is because of these reasons that it can be argued that the aviation sector cannot be truly deregulated.

While it is evident that a multilateral approach would be desirable in some areas such as granting immunity, it is unlikely this can be achieved on a global scale because States are on different sides of the deregulation argument.

For these reasons it is suggested that aviation deregulation can be better achieved through bi-lateral negotiations or liberal agreements on regional levels which would create areas of deregulated airspace that is truly beneficial to all States.

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The authors declare that they have no conflicts of interest to this work.

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