

# **Air Traffic Rights - the Path to Multilateralism**

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# *Air Transport Trading Agreements*

**BILATERAL**



**MULTILATERAL**

# *Types of Air Transport Trading Agreements*

**Bilateral**

**“Open Skies”**

**Plurilateral**

**Multilateral**

## ***Bilateral Negotiation Topics***

- **Routes (& airports) to be served and attached Freedoms plus any Third Country involvement**
- **Airline(s) designation**
- **Capacity (frequency, aircraft type) by route**
- **Pricing regime**
- **Charter and cargo provisions**
- **Ancillary issues: CRS access, codesharing arrangements, slots, gate & terminal space**

# The Five Freedoms of the Air

- 1<sup>st</sup> - the right to overfly
- 2<sup>nd</sup> - the right to land for technical reasons
- 3<sup>rd</sup> - the right to carry revenue traffic from your country to another (e.g. China Southern: Guangzhou to Sydney)
- 4<sup>th</sup> - the right to carry revenue traffic to your country from another (e.g. China Southern: Sydney to Guangzhou)
- 5<sup>th</sup> - the right to carry revenue traffic between two foreign countries, provided the service originates or is destined for the carrier's home country (e.g. Air India: Delhi – *London Heathrow* – *New York JFK*)

# Post Chicago Freedoms

- 6<sup>th</sup> - Combination of 3<sup>rd</sup> and 4<sup>th</sup> freedom rights, enabling an airline to carry revenue traffic between two foreign countries via its own state (e.g. Finnair: London – Helsinki – Bangkok)**
  
- 7<sup>th</sup> - The right to carry revenue traffic between two foreign countries with no requirement to originate or terminate the service in the carrier's home state (e.g. Ryanair: London *Stansted* – Stockholm *Skavsta*)**
  
- 8<sup>th</sup> - The right to carry revenue traffic between two locations in a foreign country (cabotage) (e.g. easyJet: Paris (Orly) – Nice)**

***Sometimes the 8<sup>th</sup> freedom is split, so that consecutive cabotage is deemed the 8<sup>th</sup> right and stand alone cabotage as the 9<sup>th</sup>.***

## Other Traffic Rights

### **Change of Gauge –**

*the right to transfer traffic to a different sized aircraft at an intermediate point in a foreign country (e.g. the first leg of TAP's Porto – Lisbon – Rio de Janeiro service is operated by Airbus 319, with a change to Airbus 340 for the transatlantic sector)*

### **Codesharing –**

*the right to market the services of another airline as if they were your own flights (e.g. China Eastern's Shanghai – Sydney MU561 service is marketed by Qantas as QF338)*

## ***Regulation Applied to Air Transport***

- **Route Rights**
- **Traffic Carrying Rights**
- **Designation**
- **Capacity**
- **Fares**



# Types of Bilateral Agreement

Features	Restrictive	Bermuda 1	Liberal
3 <sup>rd</sup> & 4 <sup>th</sup> Freedoms	Limited rights	Limited rights	Open route access
5 <sup>th</sup> Freedom	Few rights	Several rights	Some rights
Designation	Single	Single / Double	Multiple
Capacity	50:50 split Revenue pool sometimes required	Post-facto capacity review	No limits
Pricing	Tariffs based on cost + profit Double Approval IATA tariffs applicable	Tariffs based on cost + profit Double Approval IATA tariffs applicable	Double Disapproval

## ***Fare Regulation Regimes***

*e.g. Air New Zealand fare from Los Angeles to Auckland*

- ***Double Approval:*** both the New Zealand and US Governments must give their approval
- ***Country of Origin Approval:*** the US Government must give its approval
- ***Home State Approval:*** the New Zealand Government must give its approval
- ***Double Disapproval:*** the fare is approved unless both governments disagree
- ***No government intervention***

# ***US Aviation Policy 1977/8***

**“The general principle which has governed United States aviation policy is that competition provides the best service for the public”**

***Aviation Subcommittee of the House Public Works and  
Transportation Committee, 1977***

**US aim is to provide “maximum consumer benefits...through the preservation and extension of competition between airlines in a fair marketplace”**

***1978 statement on “International Air Transport Negotiations”***

## ***US Aviation Policy Goals***

- ➔ **New opportunities for innovative and competitive pricing**
- ➔ **Elimination of restrictions on capacity, frequency and route operating rights**
- ➔ **Flexibility for multiple designation of US airlines**
- ➔ **Elimination of discrimination and unfair competitive practices faced by US airlines in international transportation**
- ➔ **Authorization of more US cities as international gateways**
- ➔ **Liberalisation of charter rules**
- ➔ **Facilitation of competitive air cargo services**

# **BERMUDA II 1977 UK-US AGREEMENT**

- **UK gained 5 US gateways**
- **US lost around 30 fifth freedom routes**
- **Strict capacity controls**
- **Double approval pricing regime**
- **Double designation on only two routes**
- **UK gained Manchester exclusive rights**
- **Change of gauge permitted**

# US - NETHERLANDS 1978 AGREEMENT

- **Unrestricted 3rd, 4th and 5th freedom rights for US carriers**
- **Dutch rights to 5 US gateways**
- **Dutch 5th freedom rights on Houston – Montreal route**
- **No capacity controls**
- **Country of origin pricing regime**

## US – Singapore Agreement 1978

- ➔ **Unrestricted designation for US carriers**
- ➔ **Unrestricted 5<sup>th</sup> freedom rights for US carriers**
- ➔ **Limited 5<sup>th</sup> freedom rights for Singapore**
- ➔ **No capacity restriction**
- ➔ **Double disapproval pricing**

# INITIAL CONSEQUENCES OF INTERNATIONAL US LIBERALISATION

- **New routes and more carriers operating**
- **Lower fares**
- **Poor profitability**
- **High traffic growth**
- **Increase in US share of traffic**



## EU – US Traffic



# US “OPEN SKIES” AGREEMENTS

## *Positive features*

- 1. Full 5<sup>th</sup> freedom rights**
- 2. No restrictions on capacity, fares or routings**
- 3. Access to all points in each country**
- 4. Unrestricted designation**

## *Negative features*

- 1. No 7th & 8th freedom rights**
- 2. Strict National Ownership and Effective Control Restrictions**
- 3. Anti-trust Immunity**

## **Anti-trust Immunity**

**In exchange for a country signing an “Open Skies” bilateral agreement, the US Government will grant anti-trust immunity to the designated carriers from the two respective states enabling them to make joint decisions on pricing, scheduling, capacity provision and service quality.**

**Without such immunity airline alliances would be very restricted in terms of what aspects of their businesses they could jointly undertake.**

## US Open Skies Deals

- **90 liberalised bilateral agreements have now been established with the US. This includes all EU states.**
- **The first US Open Skies deal was agreed in 1992 with the Netherlands.**
- **The long awaited EU-US deal was signed in April 2007 and will become effective in March 2008.**
- **The most recent deal was agreed in February 2008 with Australia.**

## Weekly frequencies from Amsterdam

To:	1988	1992	1998
Atlanta	5	13	14
Boston	4	7	7
Chicago	10	7	7
Detroit	0	7	21
Houston	7	7	7
Los Angeles	8	7	14
Minneapolis	0	3	14
New York	23	28	30

# UK – US Scheduled Passenger Traffic

**1999**

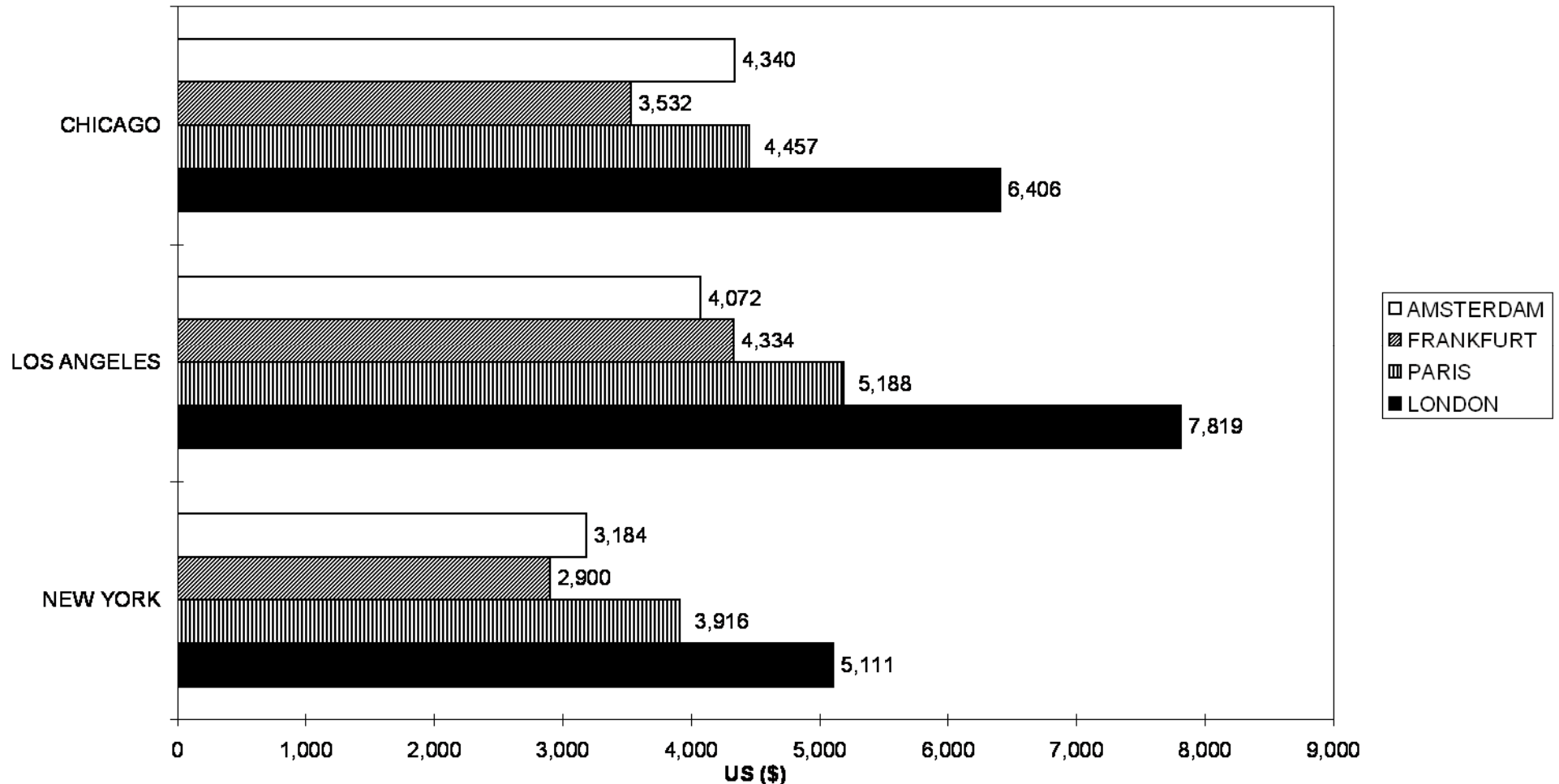
<b>Airport</b>	<b>Passengers</b>	<b>% share</b>
<b>Heathrow</b>	<b>9,937,404</b>	<b>59.7</b>
<b>Gatwick</b>	<b>5,444,137</b>	<b>32.7</b>
<b>Manchester</b>	<b>857,893</b>	<b>5.2</b>
<b>Birmingham</b>	<b>217,727</b>	<b>1.3</b>
<b>Glasgow</b>	<b>182,869</b>	<b>1.1</b>
<b><i>Total</i></b>	<b><i>16,640,030</i></b>	

# UK – US Airline Market Shares

**1999**

<b>Airline</b>	<b>Passengers</b>	<b>% share</b>
<b>BA</b>	<b>6,886,000</b>	<b>40.2</b>
<b>Virgin</b>	<b>2,996,000</b>	<b>17.5</b>
<b>American</b>	<b>2,380,000</b>	<b>13.9</b>
<b>United</b>	<b>2,070,000</b>	<b>12.1</b>
<b>Continental</b>	<b>1,023,000</b>	<b>6.0</b>
<b>Delta</b>	<b>741,000</b>	<b>4.3</b>
<b>Northwest</b>	<b>378,000</b>	<b>2.2</b>
<b>US Airways</b>	<b>286,000</b>	<b>1.7</b>
<b>TWA</b>	<b>146,000</b>	<b>0.9</b>

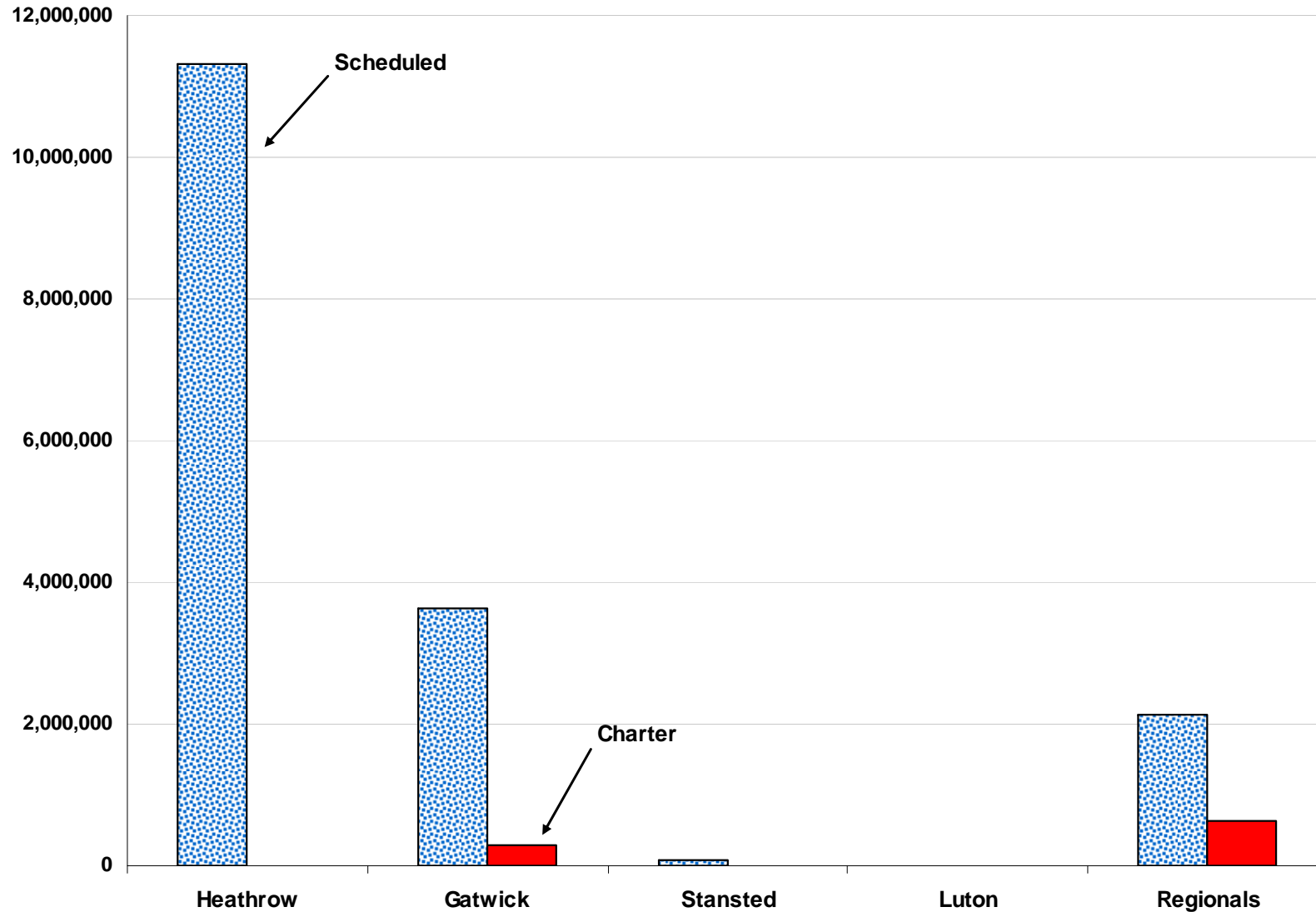
**Lowest Business Class Return Fares (on EU majors) in US Dollars \*\***  
 (travelling out on Monday 5 June 2000 and returning on Friday 9 June 2000  
 data obtained from Travelocity.com 6 April 2000)



\*\* (calculated using 1999 Purchasing Power Parity Exchange Rates from OECD)



# UK – US Traffic in 2006



## Market Leaders on the North Atlantic in 2007

US Carriers	Seat Share	EU Carriers	Seat Share
Delta	10.7%	British Airways	10.4%
Continental	8.5%	Lufthansa	9.1%
American	8.3%	Air France	7.0%
United	7.3%	Virgin Atlantic	5.9%
US Airways	4.8%	KLM	2.8%
Northwest	4.5%	Aer Lingus	2.4%
<b>Total US carriers</b>	<b>44.3%</b>	<b>Total non-US carriers</b>	<b>55.7%</b>

Source: OAG Max Online for w/c 20 August 2007

## North Atlantic Capacity Share in 2007

US Airports	Seat Share	EU Airports	Seat Share
New York JFK	20.4%	London Heathrow	20.5%
New York Newark	12.2%	Frankfurt	12.6%
Chicago O'Hare	9.9%	Paris CDG	11.7%
Washington Dulles	7.8%	Amsterdam	8.4%
Atlanta	6.8%	London Gatwick	7.1%
Los Angeles	6.0%	Rome Fiumicino	3.8%
Boston	6.0%	Munich	3.3%
Philadelphia	5.2%	Manchester	3.2%
All others	25.6%	All others	29.4%
Source: OAG Max Online for w/c 20 August 2007			

## Distribution of Europe - US traffic in 2007

	Capacity share
UK	33.2%
Germany	18.3%
France	12.0%
Netherlands	8.4%
Italy	6.7%
Ireland	4.8%
Spain	3.9%
Switzerland	3.1%

# EU – US Open Skies

- Signed 30 April 2007 and implemented 30 March 2008
- Key features:
  - ~ unlimited 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> freedom rights
  - ~ no pricing restrictions (US carriers not allowed to price lead on intra-EC routes)
  - ~ restricted 7<sup>th</sup> freedom rights apply (EC carriers can operate passenger services between any point in the US and any point in not only the EC but also the European Common Aviation Area)
  - ~ unrestricted 7<sup>th</sup> freedom rights for all-cargo services operated by EC carriers, but only in respect of US carriers to eight Member States (Czech Republic, France, Germany, Luxembourg, Malta, Poland, Portugal, and Slovakia)

# EU – US Open Skies

## ■ Key features:

- ~ US has agreed to accept a “Community clause” which will allow any EC/EEA airline to operate between the US and the EC/EEA
- ~ Ownership by EC nationals of more than 50% of the total equity of a US airline shall not be presumed to constitute control, but will be considered on a case by case basis
- ~ The EC may limit investments by US nationals in the equity of EC carriers to the level allowed by the US
- ~ no objection will be raised to the ownership of a carrier in a third country by nationals of the other side

# EU – US Open Skies

## ■ Key features:

- ~ **Greater flexibility for wet leasing (but only for international services), codesharing and franchising**
- ~ **EC airlines have the right to carry certain categories of US government traffic under the Fly America programme**

# EU – US Open Skies

## ■ Stage 2 negotiations:

- ~ to commence by July 2008 and to involve further liberalisation of traffic rights, additional foreign investment opportunities, the effect of environmental and infrastructure constraints, further liberalisation of wet leasing and access to the Fly America programme
- ~ If either party is dissatisfied with progress by 2010 it may suspend rights given by the Agreement



## Impact so far

- **Transfer of some services operated by Continental, Delta, Northwest and US Airways from Gatwick to Heathrow**
- **Air France to operate daily Heathrow – Los Angeles**
- **BA setting up “Open Skies” subsidiary to operate Boeing 757 fleet in mixed seating configuration initially from Paris to New York**
- **BA to operate Airbus 318 in all business configuration from London City to New York (with a refuelling stop in Shannon)**

# Global Alliances

- **Developed by carriers to circumvent bilateral restrictions**
- **Airlines need immunity from US Antitrust Legislation in order for an alliance to be able to function**
- **In exchange for a country agreeing an Open Skies deal, the US will grant such immunity so enabling alliance carriers to collude**
- **The US goal in Europe had been to prise open Heathrow by establishing Open Skies deals with neighbouring countries**

# Alliances Groupings

	Europe	N America	S America	AsiaPacific	Africa/M East
	Aer Lingus, BA, Finnair, Iberia, Malev	American	LAN	Cathay Pacific, Dragonair, JAL, Qantas	Royal Jordanian
	Austrian, bmi, LOT, Lufthansa, SAS, Spanair, Swiss, TAP	Air Canada, United, US Airways		Air China, Air NZ, All Nippon, Asiana, Singapore, Thai	SAA
	Aeroflot, Air France – KLM, Alitalia, CSA	Continental, Delta, Northwest	Aeromexico, COPA	China Southern, Korean	Kenya Airways

# Airline Alliance Capacity

## August 2007 Data



Capacity (ASK billions)	24.3	18.3	21.3
World share ASKs (%)	20.8%	15.6%	18.2%

45.4% of world's capacity remains unaligned

Source: Airline Business, September 2007

# Alliance Financial Summary - 2006

	Revenues (\$million)	Operating Profit (\$million)	Net Profit \$million
	\$89,649	\$4,972	\$2,043
	\$93,065	\$3,256	<b>\$-7,766</b>
	\$122,786	\$4,753	\$4,849

Source: Airline Business, September 2007

# Largest Unaligned Airlines

<b>Airline</b>	<b>Likely Alliance Membership</b>
<b>China Eastern</b>	<b>oneworld</b>
<b>Emirates</b>	
<b>Malaysia</b>	<b>SkyTeam</b>

## **Anti-trust Immunity and Alliance Activity**

**As the UK has not established an “Open Skies” deal with the US, *Oneworld* alliance members British Airways and American Airlines do not have anti-trust immunity.**

**They are therefore at a disadvantage compared to Lufthansa and United (*Star* alliance), Air France-KLM and Delta (*Skyteam* alliance).**

# Airline Deregulation

- ✈ US Domestic Market (rapidly achieved)
- ✈ Intra-European Market (gradual approach)

## *Forms of Economic Regulation*

	Domestic US	Intra-Europe
Fares	✓	✓
Capacity	x	✓
Market Entry	✓	✓



# ***The European Approach***

**Stage 1      Bilateral Harmonisation**

**Stage 2      Bilateral Liberalisation**

**Stage 3      Multilateralism**

***Key Underlying Objective:***

***Achieving a Common European Market backed by  
legislation and a supranational coordinating body***

# Europe's Multilateral Regime

## Key features:

- All eight freedoms of the air may be exercised by carriers with an EU Air Operators Certificate
- No pricing controls
- No capacity restrictions
- National ownership and control replaced by Community ownership

# Europe's Common Aviation Area

## *Participating Countries:*

- 27 EU Member States** - Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom
  
- 8 Non-EU Member States** - Albania, Bosnia Herzegovina, Croatia, Iceland, Macedonia, Norway, Serbia and Montenegro

## **EC Third Country Policy**

In 1998, the European Commission (EC) took 8 Member States (Austria, Belgium, Denmark, Finland, Germany, Luxembourg, Sweden, UK) to the European Court of Justice for establishing bilateral agreements with the US that discriminated against EU airlines.

The ruling of the Court in November 2002 forced the EU Council of Ministers in June 2003 to grant a mandate to the EC allowing it to begin negotiating an EU bilateral with the US. The deal took four years to negotiate.

## Regulation 847/2004

- **All existing bilateral agreements between Member States and Third Countries that contain provisions contrary to Community law must be amended or replaced by new agreements that are wholly compatible with Community law.**
- **Member States must establish non discriminatory and transparent procedures for the distribution of traffic rights between Community air carriers. In applying those procedures Member States should have due regard to the need to preserve continuity of air services.**

## Mechanisms to amend existing bilateral agreements

- First approach comprises negotiations undertaken by individual Member States, which involve the insertion of standard clauses devised by the Commission and Member States.
- Second approach involves bilateral negotiation at Community level by the Commission in the framework of the *horizontal mandate*, which enables the insertion of the necessary standard clauses in all of the agreements reached between the Member States and a Third Country
- 32 *horizontal* agreements have so far been established, including with Albania, Australia, Azerbaijan, Bosnia, Bulgaria, Chile, Croatia, Georgia, Israel, Kazakhstan, Malaysia, Moldavia, Morocco, Nepal, New Zealand, Pakistan, Romania, Singapore and Ukraine.
- Around 600 bilateral agreements in all have now been amended.

## **European Commission web site**

***[http://ec.europa.eu/transport/air\\_portal/](http://ec.europa.eu/transport/air_portal/)***

## Future EU External Aviation Strategy

- A substantially more liberal trade agreement with the US could form a blueprint for future Community ASAs with Third Countries
- Commission issued a communication COM (2005) 79 outlining its future external aviation strategy
- The achievement of an European Open Aviation Area by 2010 comprising the EU and all neighbouring countries located along its eastern and southern borders is the objective



## Future EU External Aviation Strategy

- Aim is to establish a European Open Aviation Area involving countries of the Western Balkans, with Euro–Mediterranean agreements extending this Area to the south
- In addition, the establishment of global aviation agreements with important trading partners, such as Australia, Canada, Chile, China, India, Japan, New Zealand, Singapore and South Korea are identified as important goals

# The Future Regulatory Picture

- The formation of a Transatlantic Common Aviation Area could ultimately result in a common set of economic regulations (including competition laws) being applied to air transport services between and within Europe and the US
- The Commission was granted a mandate by the Council in 2007 to negotiate a bilateral on behalf of the Member States with Canada. Other EU-wide bilateral agreements with important trading partners will follow

## Other regional / plurilateral agreements

<b>Name</b>	<b>Agreed</b>	<b>Participants</b>
<b>Caricom (Caribbean)</b>	<b>1996</b>	<b>In force by 9 out of 15 states</b>
<b>Fortaleza</b>	<b>1997</b>	<b>6 MERCOSUR states</b>
<b>Banjul Accord</b>	<b>1997</b>	<b>6 West African states</b>
<b>CLMV</b>	<b>1997</b>	<b>Cambodia, Laos, Myanmar, Vietnam</b>
<b>ACAC</b>	<b>1999</b>	<b>16 Middle East &amp; N. African states</b>
<b>CEMAC</b>	<b>1999</b>	<b>6 Central African states</b>
<b>COMESA</b>	<b>1999</b>	<b>20 Eastern &amp; Southern African states</b>
<b>Yamoussoukro 2</b>	<b>1999</b>	<b>52 African Union states</b>
<b>IMT</b>	<b>1999</b>	<b>Indonesia, Malaysia and Thailand</b>

## Other regional / plurilateral agreements

<b>Name</b>	<b>Agreed</b>	<b>Participants</b>
<b>BIMP</b>	<b>1999</b>	<b>Brunei, Indonesia, Malaysia and Philippines</b>
<b>MALIAT</b>	<b>2001</b>	<b>Brunei, Chile, New Zealand, Samoa, Singapore, Tonga and US</b>