Air Transportation Management,
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Air Law, Regulation and
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Course material:

Licensing and Economic Regulation of Airlines (Domestic)

Modules 19 & 20

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ble, the provision of transportation services in the United States has been left to private firms (a.k.a common carriers). When it has not been economically feasible, such as with airports, air traffic control and the airways, the government has assumed responsibility—state and local governments through ownership and operation of airports, and the federal government through capital funding support for airports and operation of the air traffic control system.[125]

Federal regulation of the transportation sector of the U.S. economy has served various purposes: to remedy market deficiencies (such as lack of effective competition, or to remedy destructive competition), to override the market to achieve broader social purposes, and to ensure uniformity in the face of regulatory efforts by the states. These purposes and the manner in which regulation has been implemented to achieve them affect not only the performance of the companies and industries in this sector, but also the ability of the United States to lead the global economy.

In 1887, Congress passed the Interstate Commerce Act to protect the shipping public from the monopoly power of the rail industry, and created the Interstate Commerce Commission to carry out that regulatory charge. In 1935, the Commission's regulatory authority was extended to include the nascent interstate trucking and bus operations. Other sectors of surface transportation—pipelines, domestic water carriers and freight forwarders—were subjected to economic regulation in 1910, 1940, and 1942, respectively. Airlines were regulated in the same fashion beginning in 1938. Federal economic regulation of transportation developed into a comprehensive web of governmental oversight of entry and exit, rates, consolidations, and service quality. Regulation reached its high water mark in the 1950s and 1960s.

In the late 1970s and early 1980s, Congress began to pare and refine federal transportation regulation to reflect contemporary industry conditions and evolving ideological attitudes. The result was to reduce significantly the federal presence in the interstate transportation industry.

At this writing, railroads have consolidated into four major lines; the bus industry has one large survivor; and several hundred airlines and trucking companies have gone bankrupt.

[125] *See* Laurence E. Gesell, *The Administration of Public Airports*, Chaps. 9 & 10 (4th ed.1999).

CHAPTER 7

DOMESTIC REGULATION OF AIR TRANSPORTATION

In dealing with the issue of compliance disposition, the key question is whether the applicant will conform to the provisions of the Federal Aviation Act and the rules, regulations and requirements there under.

The U.S. Department of Transportation

DOMESTIC VERSUS FOREIGN POLICY

This chapter and the next address regulatory policy in air transportation. Reviewed first is *domestic policy* (sometimes called public policy), which outlines and circumscribes the bounds of decisions, laws, and programs made by a government which are directly related to issues and activity within a given country or geo-political boundary. It is the set of laws and regulations that a government establishes within its nation's or region's borders. Domestic policy differs from foreign policy; the latter referring to the ways a government advances its global or international political interests. *Foreign policy* (sometimes referred to as foreign or international relations) is made up of strategies chosen by a State to safeguard its national self-interests, or by many States to safeguard the common interests of all those participating. The subsequent Chapter 8 looks at international or foreign policy in air transportation.

Domestic policy covers a wide range of areas, including business, education, energy, health care, law enforcement, money and taxes, natural resources, social welfare, and personal rights and freedoms;

or, as in this case, air transportation regulation. Domestic policy decisions usually reflect a nation's history and experience, its social and economic conditions, the needs and priorities of its people, and the nature of its government. Foreign policy, on the other hand, consists of strategies employed to interact internationally and must reflect the collective histories and experiences of many countries.

UNITED STATES REGULATION

LEGISLATION

Congressional enactments governing commercial aviation began with the Kelly Act (Contract Air Mail Act of 1925), which gave the Postmaster General authority to award contracts for the carriage of mail to private carriers—essentially, a subsidy system for the nascent airline industry. The Air Commerce Act of 1926 authorized the Secretary of Commerce to regulate the design of aircraft and materials used in their construction, as well as the safety and maintenance of airways, airports and air navigation facilities.[1] That statute was replaced by the Civil Aeronautics Act of 1938, which created the Civil Aeronautics Authority (whose name was changed to the Civil Aeronautics Board [CAB] two years later), vesting in it jurisdiction over safety and economic (pricing, entry and antitrust) regulation.[2] Economic regulation consisted principally of:

- Licensing of entry (proposed new operations or abandonment of existing operations had to be consistent with the "public convenience and necessity," and the applicant had to be "fit, willing and able" to provide the proposed service and abide by the law;
- Approval of pricing, whereby carriers filed tariffs proposing rates, which were reviewed under statutory standards that rates be "just and reasonable" and "nondiscriminatory"; and
- Review of inter-carrier agreements for such functions as pricing or capacity; if they were deemed by the CAB to be in the "public interest" antitrust immunity was automatically conferred upon them.

[1] 44 Stat. 568.
[2] 52 Stat. 973.

Note that some important elements of competition were unregulated, including the frequency and capacity of operations, size or type of aircraft, or service provided. The Civil Aeronautics Act was subsumed by the Federal Aviation Act of 1958, which gave safety jurisdiction to the then Federal Aviation Agency.[3] With creation of the U.S. Department of Transportation [DOT] in 1966, the FAA was transferred to the DOT and renamed the Federal Aviation Administration [FAA]. Its security functions were folded into the Transportation Security Administration, which was subsumed by the U.S. Department of Homeland Security in 2003.

DEREGULATION

Economic regulation over pricing and entry was largely abolished by three pieces of legislation: the Air Cargo Deregulation Act of 1977, the Airline Deregulation Act of 1978 [ADA],[4] and the International Air Transportation Competition Act of 1979,[5] all of which amended the Federal Aviation Act. Once a carrier is certificated, its domestic entry and pricing decisions are no longer regulated, though competitive abuses may be arrested under the Antitrust Laws. The Civil Aeronautics Board was terminated by the CAB Sunset Act of 1984, with its remaining authority transferred to the DOT.[6] Most of its remaining regulatory responsibilities reside in the Office of the Secretary of Transportation. Today, the principal statute is still referred to as the *Federal Aviation Act of 1958*, as amended.

OTHER RELEVANT STATUTES

Amendments to the Federal Aviation Act in the late 1970s and early 1980s were designed to strip the industry of the pricing and entry regulation that for four decades had shielded airlines from the vicissitudes of the market cycle. But despite the public's perception that the airline industry has been deregulated, in fact commercial aviation remains among the most heavily regulated of any industries in the world, particularly in the realm of safety.

[3] 72 Stat. 731.
[4] 92 Stat. 1705.
[5] Pub. L. 96-192.
[6] 98 Stat. 1703.

Other major statutes affecting aviation included the Airport and Airway Development Act of 1970, along with its attendant Airport and Airway Revenue Act of the same year (that established the Airport and Airway Trust Fund). The Aviation Trust Fund was then perpetuated by the Trust Fund Code of 1981. In addition, the Railway Labor Act of 1926 governs labor/management relations in commercial aviation as well as the railroad industry. Though not relevant to commercial aviation, another major aviation statute is the General Aviation Revitalization Act of 1994; a statute of repose, which limits liability of manufacturers of general aviation aircraft more than 18 years of age.[7] More generic statutes that influence commercial aviation include:

- Antitrust Laws (e.g., the Sherman and Clayton Acts);
- Environmental Laws (e.g., the National Environmental Policy Act);
- Employment Laws;
- Civil Rights and Disabilities Laws;
- The Bankruptcy Code; and
- The Administrative Procedure Act.

GOVERNMENTAL INSTITUTIONS

Again, one should not assume that airlines have been totally deregulated. In the United States, several agencies provide regulation or oversight to airlines. These include:

DEPARTMENT OF TRANSPORTATION

- *Office of the Secretary*—licenses air carriers and oversees consumer protection;
- *Federal Aviation Administration* [FAA]—regulates air carrier safety, licenses flight crew and mechanics, oversees design, construction and maintenance of aircraft, regulates airports, and provides air navigation services;

[7] 108 Stat. 1552; 49 U.S.C. § 40101.

- *National Transportation Safety Board* [NTSB]—investigates accidents in all modes of transportation and makes recommendations for safety improvements.

DEPARTMENT OF HOMELAND SECURITY

- *Transportation Security Administration* [TSA]—regulates aviation security.

DEPARTMENT OF STATE

- *The Department of State*—negotiates air traffic and safety agreements with foreign States.

DEPARTMENT OF JUSTICE

- *Antitrust Division*—investigates and prosecutes violations of the Sherman and Clayton Antitrust Acts.

DEPARTMENT OF THE TREASURY

- *Internal Revenue Service* [IRS]—collects taxes.

DEPARTMENT OF LABOR

- *Occupational Safety and Health Administration* [OSHA]—regulates workplace safety;
- *The National Mediation Board*—regulates union formation, collective bargaining agreements and labor/management disputes.

SECURITIES AND EXCHANGE COMMISSION

- *The Securities and Exchange Commission* [SEC]—regulates securities issuances of publically traded corporations.

ENVIRONMENTAL PROTECTION AGENCY

- *The Environmental Protection Agency* [EPA]—regulates aircraft noise, emissions, and pollution.

AIR CARRIER LICENSING

PUBLIC CONVENIENCE AND NECESSITY

Carrier licensing requires two separate authorizations from the Department of Transportation: (1) "economic authority" pursuant to a Certificate of Public Convenience and Necessity [PC&N] issued by the Office of the Secretary of Transportation; and (2) "safety authority" pursuant to an air carrier operating certificate issued by the FAA.

Prior to deregulation, applicants seeking operating authority would have to prove the "public convenience and necessity" warranted their entry on each route they sought to serve. Typically, hearings were held before an Administrative Law Judge [ALJ] who assessed how many carriers the city-pair route could economically support, and which among the applicants should be authorized to serve the route. After deregulation, entry on domestic routes is open to all certificated carriers. However, in order to obtain a certificate, an applicant still must prove that it is "fit, willing and able" to provide safe operations.

Applicants seeking air carrier operating authority to provide interstate scheduled transportation of persons, property or mail as a common carrier must secure a certificate of public convenience and necessity (it is still called that, though the only real review is over the issue of applicant "fitness"). Certificates may authorize scheduled or charter service. In addition to complying with the relevant FAA safety-related requirements, in order to engage directly or indirectly in air transportation, a U.S. citizen must hold economic authority under Title 49 U.S.C. Section 41101, or an exemption from that provision.

"Air transportation" includes the transportation of passengers or property by aircraft as a common carrier for compensation between two places in the United States or between a place in the United States and a place outside of the United States. Common carriage

consists of providing or holding out to provide transportation by air to the public for compensation or hire.[8]

PC&N certificates are issued under former Section 401 of the Federal Aviation Act, unless the operators are otherwise exempt under 14 C.F.R Part 298 (applicable to commuter or small regional carriers). An applicant seeking an exemption to operate as a commuter air carrier must establish that it is "fit, willing, and able" prior to commencing such scheduled service. 49 C.F.R. Section 298.21(d) implements the statutory fitness requirement with respect to air taxi operators seeking to provide service as commuter air carriers.[9] A carrier exclusively operating aircraft with 60 seats or less than 18,000 pounds maximum gross weight, may instead secure authority as a Part 298 air taxi operator or commuter air carrier, with lesser regulatory requirements. A "commuter air carrier" is one that operates small aircraft and carries passengers on at least five round-trip flights per week.[10]

FOREIGN OWNERSHIP AND CONTROL RESTRICTIONS

For national security reasons, Congress has restricted foreign ownership in several infrastructure industries, including broadcasting, telecommunications, inland and intercoastal water transport, electric power production, nuclear power, and commercial aviation.[11] For aviation, citizenship requirements were first imposed by the Air Commerce Act of 1926,[12] only a few years after World War I, when aircraft had first demonstrated their military capability. Under cabotage restrictions, domestic air transport is reserved for U.S. flag carriers.

The Federal Aviation Act requires that an applicant for an air carrier certificate of public convenience and necessity be: (1) an individual who is a citizen of the United States; (2) a partnership each of whose partners is an individual who is a citizen of the United States; or (3) a corporation or association organized under the laws of the United States or a State, the District of Columbia, or a territory or

[8] *Capital Airways, LLC Violations of 49 U.S.C. §§ 41101 and 41712*, DOT Order 2011-1-2 (2011), 2011 WL 1344610 (DOT) (2011).
[9] *Twin Air Calypso Limited, Inc. Violations of 49 U.S.C. §§ 41101, 41712, and 41738, 14 CFR Part 298, and Order 2005-3-38*, DOT Order 2012-2-20 (2012), 2012 WL 1048409 (DOT) (2012).
[10] 49 CFR § 298.2(e).
[11] Paul Dempsey, *The Disintegration of the U.S. Airline Industry*, 20 Transp. L. J. 9, 32-33 (1991).
[12] P.L. 69-254, 44 Stat. 568 (1926).

possession of the United States, of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, which is under the actual control of citizens of the United States, and in which at least 75% of the voting interest is owned or controlled by persons that are citizens of the United States."[13] Among issues examined by the DOT to determine whether the applicant airline is owned and controlled by U.S. citizens are:

- What is the total amount of voting stock to be held by foreign interests? Voting equity cannot exceed 25%, though non-voting equity up to 49% has been approved where the foreign State has concluded an "open skies" bilateral air transport agreement.
- Does the foreign interest possess the power to veto or control the management structure? Where the foreign-held shares are owned by a small group of investors and the U.S. held shares are widely held, it is more likely that DOT would conclude that the statutory requirement of U.S. ownership and control has not been met.
- Are there provisions in the agreement authorizing the foreigner to reorganize the carrier, or buy-out the U.S. investors?
- Do corporate governance provisions, such as "supermajority" voting provisions, give undue influence to foreign investors?
- Are U.S. citizen shareholders effective nominees or agents for foreign investors?
- Do business relationships or contracts between foreign investors and U.S. citizen shareholders such that the U.S. citizens may be unduly influenced by the foreigners?
- Has the foreign investor loaned, guaranteed loans, or provided lines of credit to the carrier?
- Are there other significant business relationships between the foreign investors and the carrier?[14]

Examining the whole of the carrier's business and relationships, a U.S. flag carrier must be "controlled" by U.S. citizens, although in the late 1980s the DOT ruled that U.S. citizens need control no more than

[13] 49 U.S.C. §§ 41102, 40102(a)(15); *see e.g. Application of Laker Airways*, DOT Order 95-12-37 (1995).
[14] DOT, *How to Become an Air Carrier* 13-15 (2005).

51% of non-voting equity and 75% of voting equity to remain in compliance. Many foreign States require only majority (51%) ownership by their citizens. In the European Union, such ownership may be held by citizens of any of its 27-member States. In addition to these specific aviation statutes, since 1975, foreign investment in all U.S. industries has been subject to review by the Committee on Foreign Investment in the United States [CFIUS], chaired by the U.S. Secretary of the Treasury, that assesses the national security implications of foreign ownership. CFIUS must complete its review and submit its recommendation to the President within 45 days, who must render a decision within 15 days thereafter, approving, suspending or prohibiting all or part of a foreign investment.[15]

On a few occasions, the DOT has imposed conditions on the approval of foreign carrier ownership of U.S. airlines. For example, in October 1988, Scandinavian Airlines [SAS] purchased 10% of the parent company of Continental Airlines, raising its ownership to 18%. DOT approved the enhanced ownership on the condition that SAS appointed only three of the 15 board members of Continental Airline Holdings, and only one member of its executive committee; none of SAS's representatives would serve as chairman of the board, and they would disqualify themselves on decisions involving competition, aviation negotiations, or other transactions potentially effecting SAS.[16]

Foreign ownership restrictions were applied in two major cases in the first decade of the 21st century. One involved purchase of DHL[17] by Deutsche Post. Another involved Richard Branson's establishment of Virgin America.[18] In both instances, foreign ownership restrictions required major restructuring of ownership and control to avoid losing the certification battles. In the DHL case, the DOT concluded:

> *We have never held that a carrier was controlled by a foreign entity merely because it had cooperative arrangements with a foreign business, or because it obtained the majority of its revenues from one or more foreign firms.*

[15] GAO, *Airline Competition: Impact of Changing Foreign Investment and Control Limits On U.S. Airlines* 19 (1992).
[16] DOT Order 90-9-15 (1990); GAO, *Airline Competition: Impact of Changing Foreign Investment and Control Limits On U.S. Airlines* 24 (1992).
[17] Named for its founders: Adrian Dalsey, Larry Hillblom & Robert Lynn.
[18] *Application of Virgin America Inc.*, DOT Order 2007-5-11 (2007).

Without the presence of other controlling factors—such as substantial ownership ties, financial arrangements, or managerial affiliations—we have not found that a close business relationship between a U.S. airline and a foreign airline meant that the foreign carrier was deemed to control the U.S. carrier.[19]

FITNESS: THREE CATEGORIES

The Federal Aviation Act, as well as interpretations there under by the CAB (before 1985), or DOT (after December 31, 1984), and the courts, mandate that in assessing an applicant's fitness for a certificate of public convenience and necessity, the DOT must scrutinize an applicant's managerial, operational, and financial fitness, as well as its compliance disposition. Although the Airline Deregulation Act of 1978 eliminated the requirement that an applicant for domestic operating authority prove consistency of its proposed operations with the "public convenience and necessity," the ADA in no way reduced the statutory burden that an applicant prove that it is "fit, willing, and able to perform such transportation properly and to conform to the...rules, regulations, and requirements of the [DOT]...."[20]

Applicants must prove that they are "fit, willing, and able" to provide the proposed operations and to comply with the federal rules and regulations.[21] In determining whether a new applicant is fit, the DOT assesses whether the applicant has:

- *Managerial Fitness*—Does the management team, as a whole, have the background, technical, managerial and operational ability to conduct the specific type of operations proposed?
- *Financial Fitness*—The applicant must provide a forecast balance sheet and profit/loss statement. The revenue forecast should identify the proposed markets, number of flights, number and type of aircraft, seating capacity, fares to be charged, block hours flown, and the form and source of capital. Does the operating and financial plan provide sufficient financial resources available to commence operations without undue risk?
- *Compliance Disposition*—Do the owners and managers have a history of safety violations or consumer deception that would pose a risk to the public? Will the applicant comply with its statutory and regulatory obligations under the law?[22]

[19] *In the Matter of DHL Airways, Inc. n/k/a Astar Air Cargo*, DOT Order 2004-5-10 (2004).
[20] Section 401 of the Federal Aviation Act required that the DOT find a carrier fit, willing and able before it issues it an operating certificate. 49 U.S.C. §§ 41101-41112. *See* 14 C.F.R. 204 (1992).
[21] 49 U.S.C. § 41102 (2002).

If the answers to all three of these categories of questions are in the affirmative, and no special issues come to the attention of DOT, the application is typically handled with a "boilerplate" *show cause order*. However, the operating authority so conferred is not perfected until the applicant has been certified by the FAA to conduct operations, and it has obtained adequate liability insurance.[23]

MANAGERIAL AND TECHNICAL EXPERTISE

In evaluating an application for a Certificate of Public Convenience and Necessity, the DOT examines whether the applicant has an adequate number of qualified managerial personnel with sufficient background, experience, and expertise to perform the proposed operations safely. The applicant should identify the positions and operating divisions in the airline, who will head them, what their responsibilities will be, and their prior employment, education and training that makes them qualified therefore. For critical technical personnel (i.e., directors of operations, maintenance and safety, chief pilot and chief inspector), the applicants should demonstrate they have the qualifications set forth in the Federal Aviation Regulations [FARs].[24]

FINANCIAL FITNESS

As did its predecessor agency (the CAB), the DOT recognizes that an applicant's fitness can appropriately be measured by its historical performance. An applicant's record of successful existing service as well as its sound financial condition could be sufficient to establish its

[22] *See Application of Air Illinois, Inc.*, DOT Order 86-2-25 (1986), and *Application of Frontier Airlines*, DOT Order 94-5-36 (1994).
[23] 14 CFR Parts 121 and 205. The applicant must produce a Certificate of Insurance on OST Form 6410 evidencing adequate liability insurance on all its aircraft, and an FAA Certificate and Operations Specification authorizing such operations.
[24] 14 CFR §§ 119.65 and 119.67. DOT, *How to Become an Air Carrier* 15-17 (2005).

fitness.[25] Conversely, an applicant with a record of consistently unsuccessful service and an unsound financial condition warrants enhanced fitness scrutiny.[26]

To perfect its Certificate of PC&N, a carrier typically must proffer to DOT:

- A copy of the holder's Air Carrier Certificate and Operations Specifications authorizing such operations from the FAA;
- A certificate of insurance on OST Form 6410 evidencing liability insurance coverage meeting the requirements of 14 CFR 205.5(b) for all of its aircraft;
- A statement of any changes the holder has undergone in its ownership, key personnel, operating plans, financial posture, or compliance history, since the date of the show cause order in this case; and
- A revised list of pre-operating expenses already paid and those remaining to be paid, as well as independent verification that the holder has available to it funds sufficient to cover any remaining pre-operating expenses and to provide a working capital reserve equal to the operating costs that would be incurred in three months of operations.[27]

The DOT requires applicants to demonstrate adequate financial ability to "generate resources sufficient to commence the proposed operations without posing an undue risk to consumers...."[28] The applicant must provide independent, third-party verification that it has access to sufficient financial resources (such as invested equity, lines of credit, or bank loans) to cover all of its pre-operating costs and the operating expenses it will incur during the first three months of normal operations, assuming no revenue during this three-month inaugural period. Specifically, the DOT wants the applicant to provide it with past and projected balance sheets and income statements, reveal any liens or encumbrances on corporate assets, and any major commitments made within the preceding six months or anticipated to be

[25] *See United Air Lines Transport Corporation—Certificate of Public Convenience and Necessity*, 1 C.A.A. 778, 790 (1940); and *Zantop Air Transport, Inc., Interim Certificate*, 37 C.A.B. 12 (1962).
[26] *See ATX, Inc., Fitness Investigation*, DOT Order 94-4-8 (1994).
[27] *Applications of Murray Air, Inc.*, DOT Order 2003-6-26.
[28] *Application of Ground Air Transfer, Inc.*, DOT Order 91-8-14 (1991).

made during the following six months. The applicant should provide a revenue forecast which includes the proposed markets and number of daily flights, the type, model, seating/cargo capacity and the number of aircraft to be flown, the number of passengers and freight and expected load factors, the fares to be charged and revenue derived there from, and the number of block hours and revenue miles expected to be flown. Expense projections should be broken down by category (direct and indirect), with an explanation of how the amounts were calculated. The applicant should estimate the amount of capital it will need to commence operations (e.g., pre-operating costs, aircraft deposits or leases, office and hangar space, insurance, salaries, training, regulatory certifications, and working capital). It should also identify the form and source of capital to support its operations.[29]

Fitness is a continuing requirement after certification. The DOT has observed that filing for bankruptcy is grounds for enhanced scrutiny of the applicant's fitness, and in some instances, is sufficient cause for denial of an application on fitness grounds[30] (although apparently a carrier already certificated is in no threat of losing its certificate if it stumbles into Chapter 11 bankruptcy). DOT has yet to promulgate regulations identifying financial fitness criteria, presumably because the unsavory balance sheets of many major carriers in the post-deregulation era might create the politically difficult question of certificate suspension or revocation. Nor has DOT employed its financial fitness requirements to bar Leveraged Buy Outs [LBOs] of airlines, despite the deleterious impact LBOs have on carrier balance sheets and their ability to purchase new aircraft to replace older jets.

For a new applicant, the DOT imposes a 90-day "zero revenue test," requiring it to prove it has available funding sufficient to cover pre-operating costs plus a working capital reserve adequate to fund projected operating expenses for at least three months of actual flight operations, assuming no revenue.[31] For example, in its certification of Lynx Aviation, DOT concluded, "Lynx expects to incur pre-operating costs of $5.3 million. The air carrier projects first-year operating expenses of approximately $101.5 million, one quarter of which is $25.4

[29] DOT, *How to Become an Air Carrier* 17-20 (2005).
[30] *In the Matter of Discovery Airways, Inc.*, DOT Order 93-1-7 (1993).
[31] *See* e.g., *Application of Sunbird Airways, Inc.*, DOT Order 94-6-30 (1994).

million. Thus, we find that Lynx requires $30.7 million to meet our financial fitness requirements"[32]

Some undercapitalized applicants have scaled down their proposed initial operations to fewer aircraft than they actually intend to operate in order to satisfy the "zero revenue test." However, DOT has gotten wise to this practice and requires notification if the applicant increases the size of its fleet. For example, in the 2007 certification of Lynx Aviation, the DOT's finding of fitness was "based on Lynx operating no more than 10 total aircraft. Thus, should Lynx wish to expand beyond the 10 aircraft proposed in its application, it is not clear that our fitness finding would remain the same. Therefore, we intend to require Lynx to provide the Department with 45-days' notice prior to implementing any expansion that would result in the operation of more than 10 aircraft."[33]

COMPLIANCE DISPOSITION

As important as an evaluation of an applicant's financial and operational ability is whether the applicant has demonstrated an ability and willingness to comply with the Federal Aviation Act, the rules and regulations promulgated there under, as well as other federal and state statutory obligations.[34] Scrutiny of an applicant's compliance disposition is imposed to assure that the airline and the persons running and controlling it do and will obey their legal and regulatory responsibilities and be diligent in maintaining safe operations. The DOT has denied applications on grounds that the applicant failed to demonstrate its ability to meet the statutory financial requirements or the ability of its management to ensure compliance with all applicable rules and regulations.[35] Failure to show that one is disposed to comply with the law is grounds for denial of a certificate.[36]

Applicants for operating authority should reveal all pending enforcement actions and formal complaints involving the Federal Aviation Act and the rules and regulations promulgated there under for the

[32] *Application of Lynx Aviation, Inc. D/B/A Frontier Airlines*, DOT Order 2007-9-31 (2007), 2007 WL 2872249 (DOT) (2007).
[33] *Application of Lynx Aviation, Inc. D/B/A Frontier Airlines*, DOT Order 2007-9-31 (2007), 2007 WL 2872249 (DOT) (2007).
[34] *See Trans-Panama, S.A., Foreign Permit*, 97 C.A.B. 161 n.27 (1982).
[35] *Application of Ryan Air Service, Inc.*, DOT Order 88-6-6 (1988).
[36] *Aeroamerica, Fitness Investigation*, 102 C.A.B. 31 (1983).

airline and any other company in which the directors, principal officers or owners have a substantial (10% or more) interest. Applicants should disclose knowing and willful violations of the Act or DOT regulations. They should reveal any civil or criminal charges brought against them within the past ten years involving fraud, felony or antitrust violations, or unfair or deceptive business practices. They should describe any aviation-related accidents.[37]

The DOT states that it "...regards compliance disposition as an important element in [its] fitness process and has not hesitated to act where there was substantial evidence of a person's lack of disposition to comply with the law and as a consequence, of an imminent risk to the public."[38] The DOT also has acknowledged that compliance disposition may be found lacking where the carrier suffered from a continuing potential for influence to be exerted by an individual who has a less than clean compliance record, by virtue of his continued ownership interest and association with the management team.[39] The DOT has stated, "In dealing with the issue of compliance disposition, the key question is whether the applicant will conform to the provisions of the Federal Aviation Act and the rules, regulations and requirements there under. A reasoned judgment regarding an applicant's future conduct can only be based on an examination of its past history, including any evidence of improper conduct."[40] Among such impropriety, false and misleading statements in the fitness application or hearing proceeding have been recognized by the DOT as sufficient grounds to warrant denial of a certificate on grounds of the failure of the applicant to demonstrate sufficient compliance disposition.[41]

Beyond the integrity and honesty necessary to perform one's legal obligations willingly and ably, among the most important criteria relevant to an applicant's fitness is its ability to perform air transportation operations safely. The first two subsections of the Congressional Declaration of Policy of the ADA emphasize the overriding importance of safety as a regulatory obligation of the highest priority. A history of noncompliance with the statutory and regulatory obliga-

[37] DOT, *How to Become an Air Carrier* 21-22 (2005).
[38] *Application of Trans World Airlines, Inc. ('TWA') for the Institution of an Investigation on its Prospective Continuing Fitness Under Section 401 (r) of the Federal Aviation Act*, DOT Order 85-6-16 (1985).
[39] *Application of Ryan Air Service, Inc.*, DOT Order 88-6-6 (1988).
[40] *Regent Air Corporation*, DOT Order 85-6-15 (1985) [citation omitted].
[41] *See Application of Discovery Airways*, DOT Order 90-7-17 (1990).

tions of other federal and state agencies is clearly grounds for denial of fitness.[42] Fitness has been denied where a carrier performed numerous operations with aircraft in a less than airworthy condition.[43] The DOT has noted that it is "charged by Congress with the responsibility of protecting consumers and their funds from undo risk."[44]

One major case in which fitness was deemed not to have been proven involved Frank Lorenzo's effort to re-enter the airline industry in the early 1990s with a company that was initially named Friendship Airlines (renamed ATX, Inc.). In the 1980s, Lorenzo had successfully assaulted a number of carriers with leveraged buy outs, including Continental, People Express (that included Frontier, Britt and PBA), and Eastern Airlines. Although for a short while he presided over the free world's largest airline empire, his carriers stumbled into bankruptcy, and Eastern was liquidated. In reviewing Lorenzo's fitness to operate a new airline, the Administrative Law Judge concluded, "Mr. Lorenzo's companies have lived on the edge of the law and have not desisted from improper conduct until lawsuits or governmental action deterred them from further transgressions. Since air safety is of paramount importance, the Department cannot take the risk of certifying an air carrier whose owner exhibits such manifest contempt for the legal process."[45] On appeal, the DOT concurred with its ALJ, concluding that because of Lorenzo's involvement with ATX, its managerial competence and compliance disposition were lacking. This conclusion was based on DOT's review of safety, service and financial failure at Lorenzo's prior airlines, as well as the widespread lack of personal good faith and trustworthiness in his business dealings and legal and regulatory proceedings.[46]

OPERATIONAL RESTRICTIONS

The Department of Transportation may impose operational restrictions on a certificate. Such restrictions may limit the duration of the authority conferred, or the number, size or type of aircraft. For example, when Republic Airways was issued a certificate in 2003, DOT imposed a restriction that limited Republic's scheduled passen-

[42] *Regent Air Corporation*, CAB Order 83-6-8 (1983).
[43] *Aeroservicios Ecuatorianos Permit, Reconsideration*, 103 C.A.B. 514 (1983).
[44] *Skystar Int'l, Emergence-Exemption Denial*, 104 C.A.B. 423 (1983).
[45] *ATX, Inc. Fitness Investigation*, 1993 WL 534627, at 63 (1993).
[46] *ATX, Inc., Fitness Investigation*, DOT Order 94-4-8 (1994).

ger service to be flown only by small aircraft under a fee for departure or similar agreement with a major U.S. air carrier.[47] The following year, DOT amended Republic's certificate to allow it to fly *large* aircraft pursuant to the same restrictions.[48] In 2007, the DOT further amended the certificate to remove the fee for departure requirement.[49]

Normally, an applicant may not advertise its air carrier service until its certificate application is perfected. Sometimes, however, DOT will waive this restriction, though it may impose strict conditions upon such waiver. For example, in 2007, Lynx Aviation (a commuter feeder flying Bombardier Q-400 turboprop aircraft on behalf of its affiliate, Frontier Airlines) was granted an exemption from the advertising ban so long as Lynx:

- Advise each customer that it does not currently possess full authority to operate the services for which the ticket is being issued and will not have such authority until such time as it is issued by the Department;
- Ensure that if the air carrier does not have effective economic authority by its proposed startup date, passengers are accommodated on a Frontier Airlines flight or a flight operated by a Frontier Airlines code-share partner;
- Advise each customer that he or she may obtain a full refund of the purchased ticket price, without penalty, if the customer requests the refund and cancels his or her reservation before Lynx commences revenue flight operations;
- Place all ticket sales proceeds (from both cash and credit card sales) into an escrow account; and
- Accommodate passengers, who, in their discretion, decline a refund if the flight reserved is not flown by either Lynx, Frontier Airlines, or a Frontier code-share partner, and elect to have Lynx find substitute air transportation for them.[50]

[47] DOT Order 2003-11-8 (2003).
[48] DOT Order 2004-7-26 (2004).
[49] *Application of Republic Airline Inc. D/B/A Republic Airlines for a Certificate of Public Convenience and Necessity Under 49 U.S.C. 41102 to Engage in Interstate Scheduled Air Transportation of Persons, Property, and Mail*, DOT Order 2007-11-27 (2007).
[50] *Application of Lynx Aviation Inc. D/B/A Frontier Airlines for a Waiver of the Provisions of 14 CFR 201.5*, DOT Order 2007-9-31 (2007), 2007 WL 2872249 (D.O.T.) (2007).

Further, toward the end of the first decade of the 21st century, DOT imposed a new requirement upon newly certificated air carriers: "all newly certificated air carriers must submit a detailed progress report, within 45 days following the end of the first year of certificated operations, to the Air Carrier Fitness Division. The report should include a description of the air carrier's current operations (number and type of aircraft, principal markets served, total number of full-time and part- time employees), a summary of how these operations have changed during the year, a discussion of any changes it anticipates from its current operations during its second year, current financial statements, and a listing of current senior management and key technical personnel."[51]

CONDITIONS TO BE SATISFIED

Once the carrier has been deemed by the Office of the Secretary of Transportation to be "fit, willing and able", it typically issues a show cause order. The order specifies that perfection of its certificate is conditioned on production of certain documents:

- A copy of its Air Carrier Certificate and Operations Specifications authorizing such operations from the FAA; A certificate of insurance on OST Form 6410 evidencing liability insurance coverage meeting the requirements of 14 CFR 205.5(b) for all of its aircraft;
- U.S. certificated air carriers and foreign air carriers operating large aircraft must carry: combined bodily injury (excluding passengers other than cargo attendants) and property damage liability: $300,000 per person, $20 million per occurrence; passenger bodily injury: $300,000 per person, $300,000 x 75% of total number of passenger seats on aircraft; air taxi operators: passenger bodily injury $75,000 per person, $75,000 x 75% of seats in aircraft;
- A statement of any changes the holder has undergone in its ownership, key personnel, operating plans, financial posture, or compliance history, since its fitness was examined; and a revised list of pre-operating expenses already paid and those remaining to be paid, as well as verification that the applicant has sufficient funds available to cover any remaining pre-operating expenses and to provide a working capital reserve equal to the operating costs that would be incurred in three months of operations.[52]

[51] *Id.*

A carrier that fails to inaugurate service (or suspends service once inaugurated) for a year, will have its certificate suspended for dormancy.[53] A transfer of operating authority requires DOT approval.

AIR CARRIER OPERATING CERTIFICATE

Before the certificate of public convenience and necessity can be perfected, the Federal Aviation Administration must also issue an air carrier operating certificate or operations specification. The carrier must be certified by the FAA to conduct operations under Part 121 of the Federal Aviation Regulations, which assesses the applicant's safety and operational ability. The process has four phases:

- *Application*;
- *Design Assessment*—the FAA reviews how well the applicant designs, documents and audits its safety-critical processes;
- *Performance Assessment*—the FAA observes and monitors the applicant's operating systems to confirm it produces the intended results; and
- *Administrative Functions*.

The FAA issues an air carrier or operating certificate when the applicant has completed all requirements.

SMALL COMMUNITY AIR SERVICE

Leading up to deregulation of the airline industry, legislators were concerned that, if given the opportunity, air carriers would exit unprofitable markets. The Airline Deregulation Act of 1978 amended the Federal Aviation Act of 1958 to provide, for ten years after enactment of the 1978 Act, guaranteed essential air transportation to "eligible points"; that is, to communities that had theretofore been

[52] *Application of Virgin America, Inc.*, DOT Order 2007-5-11 (May 18, 2007).
[53] *See e.g., Application of Sunbird Airways, Inc.*, DOT Order 94-6-30 (1994).

provided certificated air carrier service. The Civil Aeronautics Board, and later the Department of Transportation, was delegated the responsibility to review the determination of what was essential air transportation to each eligible point periodically, and based upon such review and consultations with any interested community and with its state agency, make appropriate adjustments as to what constituted essential air transportation to that point.

In accordance with the guidelines promulgated under the Airline Deregulation Act, the CAB established procedures to be followed in designating them.[54] Any person objecting to an essential air service determination must appeal within 60 days. The appeal must: contain specific objections, state how the determination departed from the established guidelines for making such essential air service determinations, and describe the level of air service that the appellant believed was essential for the community in question. Generally, essential air service determinations provided for:

- Service from the eligible point for up to two air transportation hubs;
- Two round trips each weekday and two round trips over the weekend; and
- Up to 160 available seats servicing 80 passengers per day with 40 seats each way.

The Essential Air Services [EAS] program was initially created by the Airline Deregulation Act for a ten-year period (which has since been extended) to allow small communities (eligible points) which had scheduled air service on the date deregulation was promulgated to continue to receive it on a subsidized basis, if necessary.[55] The statute provides for eligible points to receive twice daily service six days a week to a hub airport within 400 miles in aircraft seating not fewer than 15 passengers.[56] However, Congress slashed the EAS budget by one-third in 1995, requiring the DOT to implement program-wide reductions eliminating subsidies for second-hub service, reducing

[54] *See Coastal Airlines v. Civil Aeronautics Board* CCH 17 AVI 18,444 (1983).
[55] 49 U.S.C. §§ 41731 - 41742 (2002); 14 CFR Part 271.
[56] 49 U.S.C. § 41732.

subsidies to five days a week, and terminating subsidies for more than two round-trips a day.[57]

In the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century of 2000 [AIR-21],[58] Congress established a pilot program providing grants to small communities to assist them in enhancing their air service. The program was reauthorized and its "pilot" status deleted in the Vision 100-Century of Aviation Reauthorization Act of 2003.[59] A maximum of 40 grants per year may be made, with no more than four going to any one state. To qualify, the airport must be no larger than a small hub airport having insufficient air carrier service, or suffering from unreasonably high fares. The grants may be used for such things as advertising or promotional activities, studies, and airline revenue guaranteed.

In selecting communities to receive a grant from the program, the DOT must give priority to those communities where:

- Average air fares are higher than the air fares for all communities;
- A portion of the cost is provided from local, non-airport-revenue sources;
- A public-private partnership has been or will be established to facilitate air carrier service to the community;
- Improved service will bring the material benefits of scheduled air transportation to a broad section of the traveling public whose access to the national air transportation system is limited;
- The assistance will be used promptly; and
- Multiple communities cooperate to submit a regional application to consolidate air service into a single regional airport.[60]

AIRCRAFT OWNERSHIP, LEASING AND FINANCE

Preceding the tail number on all U.S. registered aircraft is the letter "N." The federal government has required central registry since 1938. The FAA maintains its central aircraft registry at Oklahoma

[57] DOT Order 95-11-28 (1995).
[58] Pub. L. 106-181.
[59] Pub. L. 108-176.
[60] Source: DOT.

City, where ownership, security interests and liens against civil aircraft are filed. The Federal Aviation Administration Drug Enforcement Act of 1988 authorized the FAA to tighten registration procedures in an attempt to identify aircraft used in drug smuggling. Aircraft can be financed with debt under equipment trust certificates, or leases, but to be perfected, such security interests must be recorded.[61]

In general, the owner of an aircraft is bound to use reasonable care to prevent injury to others. What is considered "reasonable" may vary from state to state, and may be determined only after careful consideration of each individual situation. Even so, federal law makes it clear that the aircraft owner as well as the aircraft operator may be held liable.[62] But under the common law rules of negligence, it is ordinarily the operator, and not the owner, who is at fault in incidences involving aircraft mishaps. Airman (or "operator") responsibilities are addressed elsewhere, but the focus here is upon the airline owner, title (i.e., a claim or right to ownership), the means of conveying (i.e., transferring) ownership, and title assurance.[63]

The first responsibility of the owner of an aircraft is to insure that the aircraft is properly registered with the Federal Aviation Administration.[64] Title V of the 1958 Act states it is unlawful to operate an aircraft in the United States if it is not registered by its owner whenever the aircraft is owned by a U.S. citizen, by a foreign country granted permanent residence in the U.S., or by corporations doing business under laws of the United States.

The owner of an aircraft registered by the FAA Administrator is issued a certificate of registration, but not title. It is important to note that registration is not evidence of ownership, but merely notification that the aircraft is duly registered with the FAA. The FAA is not a title-issuing agency, nor is it liable for title rights.[65] Unlike the combined registration and title issuance carried out by the various states with regard to automobiles, title to aircraft is by a separate legal form of conveyance or deed of title. In most states, the state not only licenses automobiles, but also receives proof of ownership and in exchange issues a certificate of title. However, with other vehicles such as boats, airplanes, trailers, and so forth, the state (like the FAA) may

[61] 49 U.S.C. § 44101 *et seq.*
[62] *Federal Aviation Act of 1958*, § 901.
[63] *See* Laurence E. Gesell, *Aviation and the Law*, Ch. 7 (3rd ed. 1998).
[64] *See Dowell v. Beech*, CCH 11 AVI 17,831 (1970).
[65] *See Koppie v. United States*, CCH AVI 17,680 (1993).

register only, without becoming involved in title issuance. Such is the case with the federal government and the national registration of aircraft. The FAA provides a centralized preemptive system of recording aircraft ownership which substitutes the multiplicity of state registration systems, but it does not "title" aircraft.

The FAA Administrator is charged with maintaining a system of recording any conveyance which affects title or interest in an aircraft (and engines over 750 horsepower), including any leases or mortgages which affect title. With reference to owner's liability, the federal law stipulates a person may not be held responsible for injury or death caused by aircraft unless the aircraft is in the person's "actual possession or control" at the time of the incident. Thus, the time of recording any changes in interest with the FAA can be of significance in liability litigation. Recordation with the FAA may also affect title. Recording interest in aircraft or engines with the FAA does not guarantee title, but it may provide priority in determining subsequent conflicting interests over title.[66]

In the purchase of an aircraft, the potential buyer is advised to follow five basic steps in the acquisition of a new airplane:

- First, a title search should be conducted to determine in a preliminary investigation if the person selling the aircraft has the right to do so;
- Second, the potential buyer(s) should attempt to determine if there are any liens or mortgages encumbering the sale. The seller may have the right to sell the aircraft, but might be transferring to the buyer not only the aircraft itself, but some liabilities as well. A title search may reveal faults in the title, and there are companies, which can be engaged to conduct title searches for potential buyers;[67]
- The third step is to obtain a formal (i.e., notarized) bill of sale;
- Fourth, all changes in interest (title, mortgages, etc.) should be recorded with the FAA; and
- The fifth and final step is to obtain title insurance, just in case the title transferred turns out to be faulty. Even though the buyer may have taken reasonable precautions and conducted

[66] *See Atlas v. Twentieth Century*, CCH 10 AVI 17,502 (1967).
[67] For example, the Aircraft Owners and Pilots Association [AOPA] provides such a title search service; or one may otherwise employ an independent title company to perform this service.

as thorough a title search as possible, something affecting the title may have been hidden or missing.

FORMS OF OWNERSHIP

The forms of aircraft ownership are generally three:

- Single ownership;
- Partnership; and
- Incorporation (or some other form of limited liability).

In single ownership there is only one owner. Obviously, the advantage of single ownership is to have complete and sole control of the disposition of an aircraft. The disadvantage is that one person alone is responsible financially and for liability of owning the aircraft.

A partnership includes more than one person having title to an aircraft. This is a common form of ownership, because it allows at least partial ownership where, absent the partnership, owning an airplane might be cost prohibitive. With shared ownership there may be limited access to the use of the aircraft. Additionally, not only is there responsibility for one's individual actions, but there is joint liability for the actions of all partners as well.

The distinct status of a corporation sets its existence apart from the status of its individual shareholders. A corporation is "an artificial person or legal entity created by the state or the federal government." The business is treated by the law as a separate and distinct entity. As a legal "person," the business owns the aircraft, along with its other assets. Individual shareholders are generally free of the liabilities of the corporation. Moreover, their ownership is limited to shares in the company and not to any of the company's tangible assets. Similar to a corporation in terms of liability is a Limited Liability Company [LLC]. In many states, small, jointly owned companies may be granted the same limits to liability found with the corporation.

TAX LIABILITY

One of the liabilities of aircraft ownership is taxation. Tax liability has two perspectives: (1) taxes that must be paid; and (2) allowable tax deductions. Aircraft owners are customarily assessed an *ad valorem* tax[68] on their aircraft as personal, or chattel, property. Personal property taxes are collected by the governmental jurisdiction where the aircraft is permanently stored (often determined by where the airplane is physically located on "tax day," or the day chosen by the tax collector to inventory the taxable properties within the tax collector's jurisdiction). *Situs* (or location) of property, for tax purposes, is determined by whether the taxing authority has sufficient contact with the personal property sought to be taxed to justify in fairness the particular tax.[69]

Airlines may be liable for the taxes at the address used for registration purposes, but also by the states wherein its aircraft have operated, landed, or flown over.[70] Another tax, for which aircraft owners may be liable, is "possessory interest tax"; a property tax attached to the use of public properties by private citizens. For example, an airline may be required to pay possessory interest taxes—over and above its normal rental/lease fees—for use of publicly owned property on a government-sponsored airport.

EUROPEAN UNION ECONOMIC REGULATION

For comparative purposes, this section reflects on economic regulation of air transportation within the European Union. The EU air transport regulation, effective November 1, 2008, establishes common rules for air transport services in the 27 member States of the European Community and amends the "third air package," of air transport liberalization. The Third Package opened all city-pair markets to entry by all "community carriers", even cabotage (domestic) markets. These are the basic provisions of the EU regulation:

ENTRY

- "Community air carriers" shall be entitled to operate intra-community air services;
- An air carrier must hold an Air Operator Certificate [AOC] issued by a member State certifying the technical capacity of

[68] *Ad valorem* is a tax imposed on the value of property; *see Black's Law Dictionary* (abridged 5th ed. 1983).
[69] *See Black's Law Dictionary* (abridged 5th ed. 1983).
[70] *See Northwest v. Minnesota*, 322 U.S. 292 (1944); *see also Northwest Airlines, and Republic Airlines v. State of Illinois*, CCH AVI 18,352 (1994).

the carrier to safely provide air services. It also must hold an operating license conferring the right to provide commercial air services. The issuing State may not discriminate against carriers from other Member States;

- A member state must suspend or revoke the operating license if the carrier: (1) no longer fulfills the requirements of the E.U. regulation; or (2) Cannot meet its actual and potential obligations for a 12-month period; however, pending a financial reorganization, and provided that safety is not at risk, the authority may grant a temporary license, not exceeding 12 months;
- The carrier's principal place of business must be located in the licensing State;
- The carrier must have majority ownership, and be "effectively controlled" by Member States and/or nationals of Member States;
- State Aid is prohibited; and
- New applicants must prove that they can meet "at any time" their "actual and potential obligations" from three months from commencement of operations assuming no revenue.

PUBLIC SERVICE OBLIGATIONS

- The regulation recognizes the need to maintain the possibility to recourse to a Public Service Obligation [PSO] when the economic development of a remote region or an island depends on it; and
- After a call for tender, the maximum concession period if the route is restricted to a single operator is increased from three to four years (and five years for ultra-peripheral regions).

CODE SHARING

- Restrictions in bilateral air service agreements between member States have been abolished with respect to intra-community air services and code-sharing.

PRICING

- The regulation requires non-discriminatory and transparent pricing of air services, prohibiting discrimination on the basis of the place of residence or the nationality of the customer or the place of establishment of the travel agent; and
- The final price must include all applicable fares, charges, taxes and fees. Additional charges may not be imposed upon passengers without their express consent ("opt-in").[71]

SUMMARY

As users of public resources (the airports and airways), airlines have been required to operate in a manner which serves the highest public interest. Among such public interest objectives are:

- The maintenance of safety as the highest priority in air transportation;
- The availability of "adequate, economic, efficient, and low-priced services without unreasonable discrimination or unfair or deceptive practices" while preventing "unfair, deceptive, predatory or anticompetitive practices....";
- Coordinating air transportation by improving relations between airlines;
- Encouraging "fair wages and working conditions" in the airline industry;
- Encouraging "efficient and well-managed air carriers to earn adequate profits and attract capital....";
- Maintaining a regulatory system responsive to the needs of the public, commerce, and the national defense;
- Avoiding excessive industry concentration, market domination, or monopoly exploitation;
- Maintaining convenient scheduled service for small communities; and
- Encouraging market entry by new and existing carriers, and the strengthening of small carriers.[72]

[71] *Regulation of the European Parliament and of the Council No 1008/08 of 24 September 2008*, OJ L 239, 31 Oct. 2008; (EEC) No. 2407/92, 2408/92 and 2409/92.
[72] 49 U.S.C. § 40101.

Essentially, these are the same objectives as outlined in the Airline Deregulation Act that amended the Federal Aviation Act in 1978. And in essence, U.S. air transportation policy is designed to assure that all regions of a vast nation receive safe, ubiquitous, competitive, reasonably priced, and seamless air transportation services, unencumbered by deceptive, discriminatory, and predatory practices, by efficient carriers able to earn adequate profits and attract capital. Whether these objectives are being met is, at present unclear.

Having looked at domestic air transportation policy, we now turn our attention to international air transport policy in the next chapter.

CHAPTER 8

INTERNATIONAL REGULATION OF AIR TRANSPORTATION

Any nation, except during the time that it is committed otherwise by the Transit or Transport or other special Agreements, is still fully authorized to take advantage of its own political position and bargaining power, as well as the fortunate geographical position of its homeland and outlying possessions, and unilaterally determine (for economic or security reasons) what foreign aircraft will be permitted to enter or be excluded from its airspace, as well as the extent to which such airspace may be used as part of world air trade routes.

Professor John Cobb Cooper
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THE CHICAGO CONVENTION

As World War II entered its final stages, several prominent members of the international community expressed concern over the post-war development of international civil aviation, realizing that this brave new world would require multilaterally negotiated solutions to a growing number of political, economic and technical problems. In response to these concerns, the United States agreed to sponsor an international conference in the hope that it would lay the foundation for the future growth of the industry. Fifty-two nations attended the International Civil Aviation Conference in Chicago in November of