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AIRLINE MERGERS AND ALLIANCES

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FOREWORD

This document comprises proceedings in the original languages of a Roundtable on Airline Mergers and Alliances which was held by the Committee on Competition Law and Policy in October 1999.

It is published under the responsibility of the Secretary General of the OECD to bring information on this topic to the attention of a wider audience.

This compilation is one of several published in a series entitled "Competition Policy Roundtables".

PRÉFACE

Ce document rassemble la documentation dans la langue d'origine dans laquelle elle a été soumise, relative à une table ronde sur les fusions et les alliances des compagnies aériennes, qui s'est tenue en octobre 1999 dans le cadre de la réunion du Comité du droit et de la politique de la concurrence.

Il est publié sous la responsabilité du Secrétaire général de l'OCDE, afin de porter à la connaissance d'un large public les éléments d'information qui ont été réunis à cette occasion.

Cette compilation fait partie de la série intitulée "Les tables rondes sur la politique de la concurrence".

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14.	Resale Price Maintenance	OCDE/GD(97)229
15.	Railways: Structure, Regulation and Competition Policy	DAFFE/CLP(98)1
16.	Competition Policy and International Airport Services	DAFFE/CLP(98)3
17.	Enhancing the Role of Competition in the Regulation of Banks	DAFFE/CLP(98)16
18.	Competition Policy and Intellectual Property Rights	DAFFE/CLP(98)18
19.	Competition and Related Regulation Issues in the Insurance Industry	DAFFE/CLP(98)20
20.	Competition Policy and Procurement Markets	DAFFE/CLP(99)3
21.	Regulation and Competition Issues in Broadcasting in the light of Convergence	DAFFE/CLP(99)1

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|-----|---|-----------------|
| 22. | Relationship between Regulators and Competition Authorities | DAFFE/CLP(99)8 |
| 23. | Buying Power of Multiproduct Retailers | DAFFE/CLP(99)21 |
| 24. | Promoting Competition in Postal Services | DAFFE/CLP(99)22 |
| 25. | Oligopoly | DAFFE/CLP(99)25 |

TABLE OF CONTENTS

EXECUTIVE SUMMARY	7
SYNTHÈSE.....	15
BACKGROUND NOTE	25
NOTE DE RÉFÉRENCE	65
SECRETARIAT SUGGESTED QUESTIONS FOR DELEGATES' CONTRIBUTIONS	111
QUESTIONS DU SECRETARIAT SUGGÉRÉES POUR LES CONTRIBUTIONS DES DÉLÉGUÉS	117
NATIONAL CONTRIBUTIONS	
Australia	123
Czech Republic	135
Denmark.....	139
Italy.....	147
Japan	155
Mexico	163
Norway.....	171
Poland	177
United Kingdom.....	183
United States, Department of Justice, Antitrust Division	199
European Commission	207
OTHERS	
United States Department of Transportation.....	221
BIAC	
Gerald L. Baliles (Hunton & Williams).....	231
United Airlines	233
James E. Bennett	247
International Chamber of Commerce.....	251
AIDE-MEMOIRE OF THE DISCUSSION	259
AIDE-MÉMOIRE DE LA DISCUSSION	281

EXECUTIVE SUMMARY

by the Secretariat

In the light of the written submissions, the background note and the oral discussion, the following points emerge:

- (1) *Travellers differ widely, in their ability to be flexible about origin and destination airports and about time and day of travel, and in their opportunity cost of time spent travelling. Because most travellers are not flexible about their origin and destination cities, airline markets are usually defined as “city-pair” markets, with exceptions in special cases.*

Travellers who have a lower opportunity cost of travel generally enjoy a wider choice of routes between their origin and destination cities, and hence benefit from a higher level of competition. But for time-sensitive travellers, indirect routes may not be an adequate substitute for non-stop services. Airlines use a variety of ticketing practices to discriminate between time-sensitive and non-time-sensitive passengers. Passengers paying full economy or business fares account for a significantly disproportionate share of airline profits. In airline alliance and merger cases, competition concerns are typically focused on the time-sensitive travellers.

The airline industry offers transport services for passengers and cargo in competition with other modes of transport. This roundtable focused on passenger transport. For passengers, although high-speed trains offer competition on a few limited routes, for most journeys air transport faces no feasible substitutes.

Air travellers differ widely from each other over such factors as the range of potential substitute origin and destination airports, time and day of travel and indirect versus non-stop routings. Most travellers are not willing to substitute different origin and destination cities, but they are willing to substitute among the airports serving those cities. To the extent this is true, it makes sense to define the geographic scope of air services markets as “city-pair” markets. In special cases this may give a market definition which is too broad or too narrow. For example, some studies have found that travellers (especially US business travellers) have a preference for Heathrow over Gatwick for flights into London. On the other hand, passengers travelling from or to points located between two major cities may be indifferent between airports serving both cities.

Air travellers also differ from one another over their opportunity cost of travel time and their willingness to substitute non-stop for indirect routes. The relative desirability of non-stop and indirect routes also depends on the length of the journey. For shorter journeys (less than several hundred kilometres), the extra time and inconvenience is unlikely to make an indirect route attractive for even very low opportunity cost travellers. On the other hand, for longer journeys (more than around 15 000 km), all routes will require at least one stop. In general, the lower the time-sensitivity of the traveller, the larger the range of effective substitute flights.

Time sensitive or high-opportunity cost travellers are typically unwilling to substitute indirect for non-stop routes, other things equal (an indirect route may be preferred if it offers more frequent

service or arrives or departs at a more convenient time). Virgin, a UK airline, reported that its studies show that time-sensitive passengers travelling between London and New York value their time at around \$US 240 per hour, suggesting that the discount required to lure such passengers onto an indirect service would be large. Time-sensitive travellers typically constitute a separate market for antitrust purposes and are particularly exposed to the exercise of market power.

Airlines use a variety of ticketing devices (such as offering different classes of travel, different flexibility with regard to ticket changes, period of stay requirements, Saturday-night stay requirements and so on) in order to distinguish time-sensitive from non-time-sensitive passengers. Although upper class and full-fare paying passengers represent a minority of travellers they generate a disproportionately large share of airline profits. For many routes, the ability to compete effectively depends on capturing a share of the high-margin time-sensitive business travellers.

- (2) *There are important economies of both scale and scope in the airline industry. Travellers prefer “seamless” connections and more frequent services. In the presence of loyalty schemes such as frequent-flyer programs, many travellers also prefer networks that serve a larger number of destinations. Larger airline networks organised in the “hub and spoke” form can take advantage of cost economies and can offer more seamless connections, more frequent services and a greater range of destinations than can smaller airline networks, making their networks more attractive, especially to full-fare paying passengers.*

Carriers that have significant operating cost advantages, both network carriers and point-to-point carriers, have been able to compete successfully with larger networks in a few markets.

Large networks enjoy both cost and demand advantages over smaller networks (although these advantages can sometimes be offset in part by carriers that have substantially lower operating costs). Travellers prefer connections between flights of the same airline to flights between distinct airlines, because “seamless” connections are typically more convenient and offer greater security in the event of delays on the incoming or outgoing flights or in the event of lost luggage. Travellers also prefer airlines with more frequent service, because they offer enhanced travel flexibility in the event of a last-minute change of plans. Airlines also enhance demand for their services through loyalty programs, such as frequent flyer programs or travel agent commission override programs, which provide incentives for travellers and travel agents to focus their bookings on a single airline. Such programs benefit larger airline networks more than smaller airline networks. These programs are especially targeted at attracting and retaining high-margin time-sensitive business travellers.

Larger networks can also exploit to a greater extent the “hub and spoke” form of organisation. Hub and spoke operation allows an airline to concentrate traffic on certain routes, allowing both larger, more efficient, planes and more frequent service. In addition, hub-and-spoke operation allows for a greater range of destinations and city-pair combinations to be served, including city-pair combinations, which would not normally generate enough traffic to justify a regular service. The addition of a new spoke to a hub-and-spoke network significantly increases the city-pair combinations served by the network, at a minimal additional cost.

There are limits to hub-and-spoke operations. The efficiencies of hub and spoke operation derive from converting a large number of point-to-point flights into a smaller number of connecting flights via one or more hubs served by larger, more efficient planes. But connecting flights are not a perfect substitute for non-stop flights. Most networks are likely to combine some aspects of both hub-and-spoke and point-to-point operations.

- (3) *As a result of the above mentioned cost and demand factors, hub-and-spoke airlines tend to be dominant on spoke and hub-hub routes, and jointly dominant (with the corresponding rival networks) on routes to and from other networks' hubs. Hub-and-spoke airlines tend to enjoy market power on non-stop routes to and from their hubs. In addition, there is a tendency for airlines to have a high share of the total traffic at their hub airports.*

New entry to erode this market power is difficult. Successful new entry has occurred from rival networks (or virtual networks), from new services that are sufficiently differentiated to avoid head-to-head competition, or, in a few city pairs, from carriers that have substantially lower operating costs.

Competing airlines on a spoke route get little benefit from the feeder traffic flowing into and out of a hub, and they typically cannot offer a loyalty program or flight frequencies to match that of hub operators. As a result, rival airlines are unable to capture a proportionate share of the higher-margin time-sensitive passengers, which are necessary to sustain the service. For these reasons, well-developed hub-and-spoke airlines tend to be dominant on non-stop spoke routes. For the same reasons routes between two networks' hub airports tend to be dominated by the networks operating the hubs at each end. When Northwest proposed the acquisition of a controlling stake in Continental, it was found that they jointly held a market share of 100 percent on seven of the nine routes between their respective hubs.

Feeder flights to and from a hub are complementary to the services of the airline operating the hub. To avoid double marginalisation and to promote needed relationship-specific investment, these services are usually more efficiently provided when integrated with the hub airline. As a result hub-and-spoke airlines tend to be dominant at their hub airports, holding a large share of the total passenger traffic. Studies show that incumbent airlines charge more than rivals do on flights to and from hub airports, suggesting that incumbent airlines enjoy market power on non-stop routes to and from their hubs.

New entry can, in some circumstances, erode this market power. One entry strategy is to introduce services from existing network hubs or from new entrants that can form alliances with existing networks. British Midland, for example, has signed a series of non-exclusive codesharing agreements with almost all-major US airlines. A second entry strategy is to offer a differentiated service that avoids direct competition with the incumbent. In the UK, for example, a number of budget carriers have established successful services carrying point-to-point leisure travellers within Europe, often focusing on lesser-utilised airports. Virgin has focused on routes with a high level of point-to-point business and leisure travellers. A third entry strategy involves providing services that are complementary to the incumbent, such as spoke services. Because of the advantages of providing such services in a manner integrated with the activities of the incumbent, such services are typically provided under some form of arrangement with the incumbent, such as a franchise. This last strategy, although enhancing the range of services available, provides no competitive pressure on the incumbent.

- (4) *Airline mergers and alliances can allow airlines to lower cost and enhance demand by rationalising the combined networks, and expanding the scope of seamless service. On the other hand, airline mergers and alliances can reduce competition and enhance market power, especially on non-stop routes to and from hub airports. The relative balance of the efficiency*

benefits and the competition effects depends on a number of factors, including the degree of overlap in the airlines' networks prior to the merger.

International or cross-border mergers are typically prevented by domestic rules prohibiting foreign ownership. In such circumstances, airlines forge international alliances, which seek to capture some of the benefits that would normally be achieved through merger.

There are strong incentives for mergers and alliances between airlines. Depending on the nature of competition between the networks prior to the merger, a merger or alliance can allow the merged airline to lower costs and enhance demand for its services by rationalising hub-and-spoke structure(s), achieving greater cost efficiencies and offering a greater range of seamless connections. On the other hand, a merger or alliance will reduce competition and could enhance market power on routes where the networks had previously overlapped, especially on spoke and hub-hub routes.

Most national airline regulations prohibit or limit foreign ownership of domestic airlines. As a result cross-border or international airline mergers are rare. Instead, airlines seek to achieve some of the benefits of a merger through an agreement. Alliances differ in the depth to which they try to co-ordinate the activities of the member airlines. An alliance may not be as efficient as a full merger – the transactions costs are likely to be higher and joint investment (fearing hold-up or the break-down of the alliance) is likely to be lower. Nevertheless, a carefully worked-through alliance could approach a full merger as regards both "pro" and anti-competitive effects.

- (5) *Although liberalisation in many OECD countries has significantly enhanced the potential for aviation competition in their domestic markets, bilateral international agreements continue to place significant restraints on the scope for competition at the international level. Such agreements limit in various ways the number and identity of the airlines that can provide services between two countries, the routes that can be flown, the number of flights that can be offered on each route and sometimes the capacities and fares that can be offered. In recent years there is a clear trend towards the liberalisation of such agreements.*

Domestic aviation liberalisation in many OECD countries has removed regulatory barriers to entry and regulatory controls on prices and capacity. Within the EU, for example, following successive deregulation directives, any EU airline may now, in principle, serve any EU route. In Japan, route-by-route licensing will end in February 2000. Many studies have documented the impact of such liberalisation on competition. In the case of the US, the deregulation of the airline industry has led to substantial benefits for consumers. The deregulation of the airline industry allowed airlines to lower costs through restructuring largely around the hub-and-spoke form and has enhanced the number of city-pair combinations that are served by non-stop or one-stop service. Prices have also declined on average, particularly for discretionary travellers and the volume of air travel has significantly increased. On the other hand, price dispersion has increased, and some passengers (particularly fully flexible business and first class fares) may now be paying more than before liberalisation, although this varies somewhat depending upon the extent of competition.

At the international level (and outside the EU), bilateral agreements continue to strictly limit the scope for competition. In particular, bilateral agreements limit, in various ways, the number and identity of the airlines that can provide services between two countries, the routes that can be flown, the number of flights that can be offered on each route and sometimes the capacities and fares that can be offered. Bilateral agreements often also prevent indirect flights from

undercutting the price of non-stop service. The bilateral system has been used to sustain inefficient national “flag carrier” airlines and in the process has kept fares up, raising costs to consumers and to other industries and has impeded the development of new travel products.

In recent years some countries (particularly the US) have sought to negotiate “open skies” agreements which are less restrictive in regard to the number and identity of airlines and the routes or capacities that can be flown. A number of such agreements have been signed between the US and individual EU countries. These agreements still do not permit entry from carriers based in countries outside the agreement to fly on routes covered by the agreement (e.g., a US-UK open skies agreement would not permit Alitalia to fly London-Rome-New York). Nor do the agreements permit cabotage (e.g., an US-UK agreement would not allow BA to carry passengers from New York to San Francisco when flying London-New York-San Francisco). There remains considerable scope for further multilateral liberalisation, particularly in relation to the discriminatory treatment of foreign-owned airlines.

- (6) *Domestic and international air services competition is also restricted in many cases by a lack of suitable airport capacity. At many international airports, the demand for take-off and landing slots and for gate facilities exceeds the available supply, especially at peak times. In addition, incumbent airlines may hold a dominant position in slots, limiting the scope for new entry. In some countries discriminatory arrangements for pricing access to airport facilities benefit the incumbent flag-carrier airline.*

Successful new entry in the airline industry requires obtaining access to airport facilities, including rights to take-off and land at the origin and destination airports at favourable times. These take-off and landing rights are known as slots. Given the advantages of scale and scope in operating a hub-and-spoke network, successful new entry at a hub airport may require a “bank” or “portfolio” of slots clustered in time, allowing a large number of flights to arrive and depart within a short period. Many existing international airports are facing capacity constraints and must ration take-off and landing slots. The number of slots that become available for new entry is typically limited, and incumbent airlines are typically at a considerable advantage at congested airports due to the widespread use of grandfather rights.

A few countries pointed out that the existing slot allocation system might enhance the competitive advantages of incumbent airlines. First, incumbent airlines, holding a large portfolio of slots, are more easily able to respond aggressively to entry by re-timing existing flights to sandwich the flights of a new entrant, limiting the entrant’s market share. Second, in most cases slots are allocated under a “use-it-or-lose-it” rule - slots must be used or returned to the slot allocation authority. In addition, in many countries slots cannot be bought or sold, but can be swapped for other slots. Incumbent airlines, with larger networks are more likely to be able to acquire and make use of poorer slots that open up and therefore more likely to be in a position to offer slots for exchange when more desirable ones become available.

Low-cost or budget carriers in the US and the UK have often succeeded in establishing new services to and from under-utilised or secondary airfields (such as Luton near London). These airfields are typically not slot constrained and often have lower fees, but they are usually further from city centres or less well-served by public transport. Thus, while such services are an important source of competition for the carriage of non-time-sensitive or leisure travellers, they are less likely to have an important competitive impact on the market for time-sensitive travellers.

Where authorities are making decisions regarding the competitive conditions between airlines, there is still a tendency to identify the public interest with the interest of the national flag carrier. Delegates heard about such cases arising in Brussels, Paris and Milan where airport authorities made decisions favouring flag carriers.

- (7) *Certain features of the airline industry favour anti-competitive practices. In particular, the high degree of price transparency and multi-market contact among the major airlines may facilitate co-ordinated behaviour. Within Europe, continuing state-ownership and the common recourse to the state for bailouts may limit the willingness of new entrants to compete. In addition, the competitive advantages of incumbency may allow incumbents to deter entry using a variety of tools.*

Putting aside the issue of economies of scale and scope, certain other features of the airline industry foster anti-competitive practices. For example, the fact that airline fares are posted on computer reservation systems allows airlines to communicate prices and price intentions very easily. Airlines have used this price transparency to facilitate co-operation. The US Department of Justice brought a successful suit against the US database of air transport prices, to stop the airlines from exchanging information about non-binding intended prices.

In addition, the fact that airline networks typically compete with each other in a very large number of different city-pair markets may facilitate collusion, as airlines can respond to discounting off an agreed price in one market by punishing in another market where the discounting airline is more vulnerable. Studies have shown that the number of markets on which airline networks meet is a factor in determining the level of prices.

Incumbent firms in any industry are unlikely to remain passive in the face of entry. There are several features of the airline industry, which make an aggressive response to entry credible and effective, deterring new entry. A new entrant (except perhaps one operating from a hub of its own) is unlikely to benefit from feeder traffic, is unlikely to be able to offer the same frequency of service (at least initially) and is unlikely to have an attractive frequent-flyer program. An incumbent can strengthen its competitive advantage by reshuffling its flight times so as to sandwich the new entrant's flights. The incumbent can also expand its supply of low-fare seats without necessarily adding any new flights. These actions incur relatively low cost and, especially if they lead to a reputation for taking aggressive action in the face of entry, may be entirely credible. The Italian antitrust authority reported a case it had brought against Alitalia for such predatory tactics against its small competitors Adriatica and Meridiana. The US also reported a case involving action by American Airlines against three low-cost carriers, Vanguard Airlines, Sunjet and Western Pacific.

In many European countries the incumbent airline remains state-owned. Several of these airlines have received state aid in the past few years. This is an indication that these airlines face a softer budget constraint than privately owned airlines. In this industry, as in others, the presence of a soft-budget constraint can be a deterrent to new entry, because the incumbent can credibly commit to sustain losses in the face of entry. Partly as a result, there has been very little entry by European carriers into the home market of other European carriers.

- (8) *Although all countries reported that the competition law applies to this industry, some specific features about the way that competition law is applied are unique to the sector. As with other cross-border mergers, international airline alliances may be subject to competition laws in more*

than one jurisdiction, giving rise to the possibility of inconsistent decisions or remedies, and heightening the need for co-operation between competition authorities.

In all OECD countries, the national competition authority can enforce the national competition law to prevent anti-competitive behaviour in this industry. In some countries, other agencies (such as the sectoral regulator) also have joint or concurrent authority to enforce competition rules and to develop and promulgate new competition rules in this sector. For example, the US Department of Transportation has recently proposed new rules about “unfair exclusionary conduct” that would control predatory pricing. In Canada, the Canadian transportation law includes a provision, which allows the government to over-ride the national competition law for a limited 90-day period. This provision was recently invoked during discussions over the future of Air Canada and Canadian Airlines.

As in other sectors of the economy, international airline mergers and alliances may be subject to review by more than one jurisdiction, raising the possibility of inconsistent decisions or remedies. BIAC, in particular, in its interventions highlighted the need for co-ordination and co-operation between competition authorities. As an example, it was pointed out that the AA/BA alliance was reviewed by four different authorities (the US DOJ, the US DOT, the UK OFT and the European Commission). The difficulties were said to be exacerbated by the fact that although the EC has a co-operation agreement with the US competition authorities, there is no such arrangement involving the US DOT.

(9) *The promotion and protection of competition in the airline industry requires attention to both competition and regulatory issues. In particular, competition in the airline industry could be preserved and enhanced through:*

- further liberalisation of regulatory constraints on competition, especially at the international level, including, for example, the application of international trade principles of transparency and non-discrimination within a multilateral context;
- attention to the mechanisms for investment in and allocation of scarce airport capacity including investment in new airports, expansion of existing airports and mechanisms for ensuring that facilities are available to entrants at key times;
- careful review of proposals for mergers and alliances, careful use of remedies to offset anti-competitive effects and consideration of divestiture or separation in cases of dominance;
- close review of frequent-flyer programs and other loyalty schemes;
- careful control over predatory behaviour and other anti-competitive practices.

Although the liberalisation that has occurred to date has highlighted the benefits of competition in the airline industry, experience has shown that this competition is also vulnerable to regulatory impediments and anti-competitive activity by incumbent airlines. Obtaining the full benefits of competition in the airline industry will require attention to both further regulatory reform and competition law enforcement.

Additional regulatory reform should involve greater liberalisation, especially at the international level, possibly within the context of multilateral negotiations. The present system of bilateral agreements fails to comply with two basic principles of the international trade system, namely transparency and non-discrimination. Regulatory reform should also involve removal of barriers to entry by removing capacity

constraints through investment in airport expansion, improving facilities at under-utilised airports, and ensuring that entrants have access to new or existing capacity as it becomes available.

The roundtable highlighted that further liberalisation may not, alone, be sufficient to ensure effective competition in the airline industry. Liberalisation of the airline industry must go hand in hand with effective enforcement of competition rules, including careful scrutiny of merger and alliance proposals, control over predatory pricing and attention to loyalty programs.

In regard to mergers and alliances, competition authorities have proposed a variety of remedies to maintain effective competition, including requiring the divestment of slots, provisions ensuring access to computer reservation systems, access to airport facilities and an obligation to inter-line. In some cases, slot divestitures may not be enough to eliminate the competition concern. The reason is that new point-to-point entry on the hub-hub route of an existing network is extremely difficult, especially for a network, which does not itself, operate a hub at one or both ends. The roundtable revealed some differences between agencies as to what further remedies should be imposed. For example, the EU has favoured adding market share restraints on key routes where there are competition concerns. The US has instead preferred “carve outs”, under which the alliance members would not be able to co-ordinate unrestricted coach class, business, or first class fares for local US point-of-sale passengers.

At least one competition agency has held that travel agent incentive schemes can be anti-competitive. Moreover, several countries noted that frequent-flyer programs might also have anti-competitive effects outweighing their benefits to consumers. Remedies limiting the anti-competitive impact of frequent-flyer programs have been proposed, such as requiring incumbent airlines to grant rivals access to their frequent-flyer schemes.

Finally, the roundtable highlighted the need for close antitrust scrutiny of other potentially anti-competitive behaviour, such as predatory pricing and other exclusionary acts and refusal to grant access to facilities such as maintenance facilities, ground-handling facilities, terminal facilities and reservation and ticketing equipment.

SYNTHÈSE

par le Secrétariat

Les documents présentés par les participants, la note de référence ainsi que le débat proprement dit permettent de dégager les points suivants :

- (1) *La flexibilité dont peuvent faire preuve les voyageurs quant aux aéroports d'origine et de destination et au choix de l'heure et de la journée varie beaucoup, de même que le coût d'opportunité de leur temps de parcours. Etant donné que la plupart des voyageurs doivent se déplacer entre des villes d'origine et de destination bien précises, les marchés des compagnies aériennes sont en général définis en termes de paires de villes, sauf dans certains cas particuliers.*

Les voyageurs pour lesquels le coût d'opportunité du déplacement est bas disposent en général d'un choix d'itinéraires plus vaste entre leurs villes d'origine et de destination, et par conséquent bénéficient d'un degré de concurrence plus élevé. En revanche, les voyageurs sensibles au facteur temps considèrent souvent qu'un itinéraire avec escale ne peut pas remplacer avantageusement un service sans escale. Les compagnies aériennes ont recours à une tarification et à des conditions de vente différenciées pour faire la distinction entre les voyageurs sensibles au facteur temps et les autres. Les passagers qui paient le plein tarif de la classe économique ou le tarif affaires sont la source d'une part très disproportionnée des profits des compagnies aériennes. Dans les dossiers d'alliances et de fusions de compagnies aériennes, les préoccupations relatives à la concurrence sont en général centrées sur les voyageurs sensibles au facteur temps.

Les compagnies aériennes offrent des services de transport de passagers et de fret qui sont en concurrence avec les autres modes de transport. Cette table ronde portait essentiellement sur le transport de passagers. En ce qui concerne ce type de trafic, bien que les trains à grande vitesse puissent concurrencer l'avion sur quelques itinéraires limités, le transport aérien est pratiquement sans rival sur la plupart des parcours.

La clientèle des compagnies aériennes est très hétérogène en ce qui concerne l'éventail des solutions de rechange qu'elle est capable d'envisager -- choix des aéroports (au départ et à l'arrivée), de l'horaire et de la journée, vol avec escale ou sans escale. La plupart des voyageurs ne sont pas disposés à changer de ville de départ ou de destination, mais sont en général plus souples quant à un éventuel changement d'aéroport desservant ces villes. Dans la mesure où cela est vrai, il est logique de définir l'aire géographique des marchés des services aériens en termes de "paires de villes". Dans certains cas particuliers, toutefois, cette définition peut se révéler trop générale ou trop étroite. Certaines études ont ainsi révélé que les voyageurs (notamment, les voyageurs d'affaires américains) qui se rendent à Londres préfèrent l'aéroport de Heathrow à celui de Gatwick. En revanche, les voyageurs dont le point de départ ou la destination se situe entre deux grandes agglomérations seront souvent indifférents aux aéroports desservant les deux agglomérations.

Par ailleurs, le coût d'opportunité du temps de parcours et la capacité d'envisager de prendre un vol avec escale plutôt qu'un vol sans escale ne sont pas les mêmes pour tous les voyageurs. L'intérêt relatif d'une liaison sans escale ou avec escale est également fonction de la durée du parcours. Sur les trajets plus courts (ne dépassant pas quelques centaines de kilomètres), une liaison avec escale, qui sera plus longue et moins commode, n'intéressera probablement même pas les voyageurs pour qui le coût d'opportunité du déplacement est très bas. En revanche, sur les très longues distances (plus de 15 000 km environ), toutes les liaisons nécessiteront au moins une escale. En général, moins le voyageur est sensible au facteur temps, meilleur sera le choix de solutions de rechange dont il disposera.

Le plus souvent, les voyageurs pour qui le facteur temps est important où le coût d'opportunité du déplacement élevé ne sont pas disposés à remplacer un vol sans escale par un vol avec escale, toutes choses égales par ailleurs (ils opteront peut-être pour la liaison avec escale si celle-ci offre une meilleure fréquence ou leur permet d'arriver ou de partir à une heure qui leur convient mieux). Une compagnie aérienne britannique, Virgin, a annoncé que d'après les études qu'elle a réalisées, les personnes pressées qui voyagent entre Londres et New York évaluent leur temps à environ 240 dollars l'heure, ce qui donne à penser qu'il faudrait accorder à cette catégorie de passagers une réduction de tarif importante pour l'attirer vers un service avec escale. Les voyageurs soucieux de leur temps constituent en général, du point de vue de la réglementation de la concurrence, un marché distinct, où un transporteur se trouve souvent en position de force.

Les compagnies aériennes appliquent une tarification et des conditions de vente différenciées (classes de voyage, souplesse plus ou moins grande en cas de modification du billet, durée du séjour, règle du samedi au dimanche, etc.) pour faire la distinction entre les passagers sensibles au facteur temps et les autres. Bien que les passagers aisés payant le plein tarif représentent la minorité de la clientèle des compagnies, ils génèrent une part disproportionnée de leurs profits. Sur de nombreuses liaisons, celles-ci ne peuvent soutenir efficacement la concurrence que si elles parviennent à s'approprier une part du marché très lucratif des voyageurs d'affaires pressés.

- (2) *Il existe d'importantes économies d'échelle et de gamme dans le secteur aérien. Les voyageurs préfèrent des liaisons intégrées et une plus grande fréquence de service. Dans le cadre des programmes de fidélisation, de nombreux voyageurs privilégient également les réseaux desservant un grand nombre de destinations. Les réseaux en étoile des grandes compagnies aériennes permettent de réaliser des économies et d'offrir un plus grand nombre de liaisons intégrées, une meilleure fréquence et un plus vaste choix de destinations que les réseaux des compagnies aériennes moins importantes. Les grands réseaux sont donc plus attrayants, surtout pour les passagers payant le plein tarif.*

Les transporteurs qui jouissent d'avantages importants au plan des coûts d'exploitation, que ce soit sur l'ensemble d'un réseau ou sur des liaisons point à point, ont été en mesure de livrer une concurrence efficace aux plus grands réseaux sur certains marchés.

Les grands réseaux bénéficient d'avantages, aux plans des coûts et de la demande, sur les réseaux plus petits (bien que certains transporteurs puissent compenser en partie ces avantages si leurs coûts d'exploitation sont sensiblement plus bas). Les voyageurs préfèrent des correspondances avec la même compagnie aérienne plutôt qu'avec des compagnies différentes, car les correspondances intégrées offrent en général plus de commodité et davantage de sécurité en cas de retard du vol d'arrivée ou de départ ou de perte de bagages. Les voyageurs préfèrent également les compagnies aériennes offrant une meilleure fréquence, car ils disposent ainsi d'une plus grande flexibilité s'ils modifient leur programme à la dernière minute. Les compagnies aériennes,

de leur côté, stimulent la demande de leurs services par des programmes de fidélisation, tels que les programmes pour grands voyageurs ou les programmes de super-commission des agents de voyages, qui encouragent les voyageurs et les agents de voyages à adopter une seule compagnie. Ces programmes avantagent les grands réseaux par rapport aux plus petits. Ils visent précisément à attirer et à conserver le marché lucratif des voyageurs d'affaires, qui attachent de l'importance au facteur temps.

Les grands réseaux se prêtent également mieux à une configuration en étoile, qui permet à une compagnie de concentrer le trafic sur certaines liaisons, et donc d'y exploiter des appareils plus gros et plus efficaces tout en offrant une meilleure fréquence de service. En outre, le réseau en étoile permet de desservir un plus grand nombre de destinations et de "paires de villes", y compris celles qui ne généreraient normalement pas suffisamment de trafic pour justifier une desserte régulière. L'ajout d'une nouvelle route radiale à un réseau en étoile accroît sensiblement le nombre de "paires de villes" desservies, à un coût supplémentaire minimal.

L'exploitation d'un réseau en étoile a toutefois ses limites. En effet, son efficacité découle de la conversion d'un grand nombre de vols point à point en un nombre moins important de vols avec correspondance via un ou plusieurs aéroports-pivots desservis par des appareils plus gros et plus rentables. Les correspondances ne constituent toutefois pas des substituts parfaits des vols sans escale. La plupart des réseaux ont tendance à panacher certains aspects de l'exploitation en étoile et de l'exploitation point à point.

- (3) *Compte tenu des facteurs précités qui agissent sur les coûts et la demande, les compagnies qui exploitent des réseaux en étoile occupent en général une position dominante sur les routes radiales et les liaisons entre les aéroports-pivots, et partagent la position dominante (avec les opérateurs des réseaux concurrents correspondants) sur les liaisons à destination et en provenance des aéroports-pivots des autres réseaux. Ces compagnies jouissent d'habitude d'un pouvoir de marché sur les liaisons sans escale à destination et en provenance de leurs aéroports-pivots et détiennent en général une part importante de l'ensemble du trafic à ces aéroports.*

Il est difficile pour de nouveaux entrants d'ébranler ce pouvoir de marché. Ceux qui y sont parvenus sont soit des réseaux concurrents (ou virtuels), soit des compagnies offrant de nouveaux services suffisamment différenciés pour éviter une concurrence frontale, soit encore, sur certaines "paires de villes", des opérateurs dont les coûts d'exploitation sont sensiblement plus bas.

Les compagnies concurrentes sur une liaison radiale ne bénéficient guère du trafic de rabattement qui arrive à l'aéroport-pivot ou en part, et ne sont en général pas en mesure d'offrir un programme de fidélisation ou des fréquences de service équivalents à ceux de l'opérateur de l'aéroport-pivot. Elles sont ainsi incapables de s'approprier une part conséquente du marché lucratif des voyageurs pressés, qui est nécessaire à la rentabilité du service. C'est pourquoi les compagnies qui exploitent des réseaux en étoile bien développés occupent en général une position dominante sur les liaisons radiales sans escale. Pour ces mêmes raisons, les routes reliant les aéroports-pivots de deux réseaux sont très souvent dominées par les réseaux exploitant ces aéroports-pivots. Lorsque Northwest a proposé de prendre une participation majoritaire dans Continental, on s'est rendu compte que les deux compagnies détenaient ensemble la totalité du marché sur sept des neuf routes reliant leurs aéroports-pivots respectifs.

Les vols de rabattement à destination et en provenance d'un aéroport-pivot sont complémentaires des services de la compagnie qui exploite l'aéroport-pivot. Afin d'éviter la double marginalisation et de favoriser les investissements nécessaires à l'amélioration des relations, ces services se

révèlent en général plus efficaces lorsqu'ils sont intégrés à la compagnie qui exploite l'aéroport-pivot. C'est pour cette raison que les compagnies exploitant des aéroports-pivots y occupent en général la position dominante et détiennent une part importante de l'ensemble du trafic passagers. Des études indiquent que les compagnies en place pratiquent des tarifs supérieurs à ceux de leurs concurrents sur les liaisons sans escale à destination et en provenance de leurs aéroports-pivots, ce qui donne à penser qu'elles détiennent sur ces liaisons un pouvoir de marché.

Dans certains cas, l'apparition de nouveaux services peut affaiblir ce pouvoir de marché. Il peut s'agir de services offerts à partir des aéroports-pivots du réseau existant ou de services exploités par de nouveaux entrants qui peuvent former des alliances avec les réseaux en place. Tel est le cas, par exemple, de British Midland, qui a signé une série d'accords non exclusifs de partage de codes avec pratiquement toutes les grandes compagnies américaines. Une autre stratégie possible consiste à offrir un service différencié pour éviter d'entrer en concurrence directe avec le transporteur en place. Au Royaume-Uni, par exemple, un certain nombre de transporteurs à tarif réduit ont lancé avec succès des services point à point destinés aux voyageurs d'agrément à l'intérieur de l'Europe, en misant souvent sur les aéroports sous-utilisés. Virgin s'est ainsi concentrée sur les routes point à point à fort trafic de voyageurs d'affaires et d'agrément. Une troisième stratégie d'entrée consiste à offrir des services qui sont complémentaires de ceux du transporteur en place, tels que les services radiaux. En raison des avantages associés à la prestation de services intégrés aux activités de la compagnie en place, ces services sont en général assurés dans le cadre d'une forme d'arrangement avec cette dernière, par exemple sous forme de concession. Cette stratégie, bien qu'elle élargisse l'éventail de services offerts, n'exerce par contre aucune pression concurrentielle sur le transporteur en place.

- (4) *Les fusions et les alliances de compagnies aériennes peuvent permettre aux transporteurs de réduire leurs coûts et de stimuler la demande en rationalisant les réseaux combinés et en élargissant le service intégré. En revanche, elles risquent de réduire la concurrence et de renforcer le pouvoir de marché, surtout sur les liaisons sans escale à destination et en provenance des aéroports-pivots. L'équilibre relatif entre les gains d'efficacité et les effets sur la concurrence est fonction d'un certain nombre de facteurs, notamment du degré de chevauchement des réseaux des compagnies aériennes concernées avant la fusion.*

Les réglementations nationales qui interdisent la prise de participation étrangère font en général obstacle aux fusions transnationales ou internationales. En pareil cas, les compagnies concluent des alliances internationales par lesquelles elles cherchent à tirer parti de certains des avantages que leur conférerait normalement une fusion.

Les compagnies aériennes ont d'excellentes raisons de rechercher les fusions et les alliances. Selon la nature de la concurrence que se livrent les réseaux concernés avant l'opération, une fusion ou une alliance peut leur permettre de réduire leurs coûts et de stimuler la demande de leurs services en rationalisant leur structure en étoile, en réalisant des gains d'efficacité économique et en offrant un plus large éventail de correspondances intégrées. En revanche, l'opération affaiblira la concurrence et risquera de renforcer le pouvoir de marché sur les routes où les réseaux se chevauchaient auparavant, surtout sur les radiales et les liaisons entre aéroports-pivots.

La réglementation nationale interdit ou limite presque toujours la participation étrangère au capital des compagnies aériennes nationales. Les fusions transnationales ou internationales sont par conséquent rares. Les compagnies s'efforcent plutôt de concrétiser une partie des avantages que comporterait une fusion en concluant une alliance, qui peut varier selon le degré de

coordination de leurs activités. L'alliance ne sera peut-être pas aussi efficace qu'une véritable fusion -- car les coûts de transaction seront vraisemblablement plus élevés et les investissements communs plus faibles (les compagnies membres craignant que l'alliance ne soit entravée ou démantelée). Néanmoins, une alliance minutieusement mise au point peut s'apparenter à une véritable fusion quant aux effets qu'elle aura en faveur ou contre la concurrence.

- (5) *Bien que la libéralisation à laquelle ont procédé de nombreux pays de l'OCDE ait sensiblement renforcé le potentiel de concurrence dans le secteur de l'aviation sur les marchés intérieurs, les accords internationaux bilatéraux limitent encore beaucoup les possibilités de concurrence au plan international. Ils restreignent de diverses façons le nombre et l'identité de compagnies habilitées à offrir des services entre deux pays, les routes qu'elles peuvent desservir, le nombre de vols qu'elles peuvent offrir sur chaque route et parfois les capacités et les tarifs. Ces dernières années, on constate une nette tendance en faveur de la libéralisation de ces accords.*

La libéralisation du transport aérien intérieur dans de nombreux pays de l'OCDE a levé les obstacles réglementaires à l'entrée et les contrôles sur les prix et la capacité. A l'intérieur de l'UE, par exemple, suite à la publication de directives successives concernant la déréglementation, toute compagnie aérienne de l'Union peut désormais, en principe, desservir n'importe quelle route sur le territoire de l'UE. Au Japon, l'attribution des autorisations route par route prendra fin en février 2000. De nombreuses études ont permis de mesurer l'impact de cette libéralisation sur la concurrence. S'agissant des Etats-Unis, la déréglementation du transport aérien s'est traduite par des avantages importants pour les consommateurs. Elle a permis aux compagnies de réduire leurs coûts en se restructurant dans une large mesure selon une configuration en étoile et elle a permis d'accroître le nombre de "paires de villes" desservies par des vols sans escale ou avec une escale. Les prix ont également baissé en moyenne, en particulier pour les voyageurs dont les besoins sont flexibles, et le volume de trafic aérien a sensiblement augmenté. En revanche, la dispersion des prix s'est accentuée, et certains tarifs (en particulier les tarifs intégralement flexibles de la classe affaires et de la première classe) sont peut-être plus élevés aujourd'hui qu'avant la libéralisation, bien que cela varie quelque peu en fonction du degré de concurrence.

Au plan international (et à l'extérieur de l'UE), les accords bilatéraux continuent de restreindre rigoureusement le champ possible de la concurrence. Ils limitent notamment de différentes façons le nombre et l'identité des compagnies aériennes habilitées à fournir des services entre deux pays, les routes qui peuvent être desservies, le nombre de vols qui peuvent être offerts sur chaque route et parfois même la capacité et les tarifs. Les accords bilatéraux empêchent souvent les compagnies d'offrir un tarif plus bas pour les vols avec escale que pour les services sans escale. Le système bilatéral a servi à soutenir des compagnies aériennes nationales inefficaces. Il a maintenu par le fait même des tarifs élevés, fait augmenter les coûts pour le consommateur et pour les autres industries, et entravé le développement de nouveaux produits de voyage.

Ces dernières années, certains pays (notamment les Etats-Unis) se sont efforcés de négocier des accords de type "ciel ouvert", qui sont moins restrictifs quant au nombre et à l'identité des compagnies aériennes ainsi qu'aux routes et aux capacités pouvant être exploitées. Plusieurs accords de ce type ont été signés entre les Etats-Unis et différents pays de l'UE. Ils ne permettent pas encore à des transporteurs domiciliés dans des pays tiers de desservir des routes visées par l'accord (par exemple, un accord entre les Etats-Unis et le Royaume-Uni n'autoriserait pas Alitalia à assurer une liaison Londres-Rome-New York). Ils ne permettent pas non plus le cabotage (le même accord entre les Etats-Unis et le Royaume-Uni n'autoriserait pas British Airways à transporter des passagers de New York à San Francisco lorsqu'il assurerait la desserte Londres-New York-San Francisco). Il reste encore beaucoup à faire en matière de libéralisation

au plan multilatéral, notamment en ce qui concerne le traitement discriminatoire des compagnies aériennes sous contrôle étranger.

- (6) *La concurrence dans les services aériens intérieurs et internationaux est également souvent limitée par une insuffisance de la capacité aéroportuaire. Dans de nombreux aéroports internationaux, la demande de créneaux de décollage et d'atterrissage ainsi que d'accès aux portes d'embarquement est supérieure à l'offre, surtout aux heures de pointe. En outre, s'agissant des créneaux, les compagnies en place occupent souvent une position dominante, ce qui limite les possibilités des nouveaux entrants. Dans certains pays, des dispositions discriminatoires relatives à la tarification de l'accès aux installations aéroportuaires favorisent les compagnies nationales en place.*

Pour qu'un nouvel entrant réussisse à prendre pied dans l'industrie du transport aérien, il lui faut obtenir l'accès aux installations et services aéroportuaires, notamment les droits de décollage et d'atterrissage aux aéroports d'origine et de destination, à des heures favorables. Ces droits sont appelés créneaux. Etant donné les avantages d'échelle et de gamme associés à l'exploitation d'un réseau en étoile, il faudrait, pour que de nouveaux transporteurs s'implantent dans un aéroport-pivot, une "banque" ou un "portefeuille" de créneaux regroupés dans un intervalle de temps donné, qui permettent à un grand nombre de vols d'arriver et de partir pendant une courte période. De nombreux aéroports internationaux sont actuellement aux prises avec des contraintes de capacité et doivent rationner les créneaux de décollage et d'atterrissage. Le nombre de créneaux qui se libèrent pour les nouveaux entrants est en général limité, et les compagnies en place jouissent la plupart du temps d'un avantage considérable dans les aéroports encombrés en raison de l'exercice généralisé des droits acquis.

Quelques pays ont souligné que le système actuel d'attribution des créneaux pourrait renforcer les avantages concurrentiels des transporteurs en place. Premièrement, ces derniers, qui détiennent un portefeuille important de créneaux, sont davantage en mesure de réagir de façon agressive à une tentative d'entrée en reprogrammant leurs vols pour littéralement coincer ceux du nouvel entrant, limitant ainsi sa part de marché. Deuxièmement, dans la plupart des cas, les créneaux sont attribués selon la règle dite du "créneau inutilisé, créneau perdu" (les créneaux doivent être utilisés, à défaut de quoi ils doivent être restitués à l'autorité responsable). En outre, dans de nombreux pays, les créneaux ne peuvent pas être achetés ou vendus, mais peuvent en revanche être échangés. Or, les compagnies en place, qui disposent de vastes réseaux, sont mieux placées pour acquérir et utiliser les créneaux peu attrayants qui se libèrent et par conséquent plus souvent en mesure d'offrir des créneaux en échange lorsque des créneaux plus intéressants deviennent disponibles.

Les transporteurs à tarif réduit des Etats-Unis et du Royaume-Uni ont souvent réussi à lancer de nouveaux services à destination et en provenance d'aéroports sous-utilisés ou secondaires (tels que celui de Luton près de Londres). En général, ces aéroports ne connaissent pas de contraintes de créneaux, les redevances y sont plus basses, mais ils sont en revanche plus éloignés du centre-ville et moins bien desservis par les transports en commun. Par conséquent, si ce type de service constitue une importante source de concurrence pour le transport des voyageurs non sensibles au facteur temps ou des voyageurs d'agrément, ils auront vraisemblablement beaucoup moins d'effet sur la concurrence dans le marché des voyageurs pressés.

Les autorités, lorsqu'elles prennent des décisions concernant les conditions de concurrence entre les compagnies aériennes, ont encore tendance à assimiler l'intérêt général à celui du transporteur national (compagnie de pavillon). Les délégués ont ainsi entendu parler de décisions des autorités des aéroports de Bruxelles, Paris et Milan qui ont favorisé les transporteurs nationaux.

- (7) *Certaines caractéristiques du transport aérien favorisent les pratiques anti-concurrentielles. Le degré élevé de transparence des prix ainsi que le fait que les grandes compagnies aériennes soient en contact sur de nombreux marchés, notamment, sont susceptibles de favoriser un comportement coordonné. En Europe, le fait que les compagnies aériennes demeurent sous le contrôle de l'Etat et qu'il soit courant de recourir à ce dernier pour renflouer les compagnies en difficulté risque de dissuader les nouveaux entrants. En outre, les avantages concurrentiels dont bénéficient les transporteurs en place peuvent leur permettre d'utiliser une panoplie de moyens dissuasifs.*

Indépendamment de la question des économies d'échelle et de gamme, certaines autres caractéristiques du transport aérien favorisent les pratiques anti-concurrentielles. Par exemple, étant donné que leurs tarifs sont affichés dans les systèmes informatisés de réservation, les compagnies aériennes peuvent très facilement se communiquer leurs tarifs en vigueur ou ceux qu'elles ont l'intention d'offrir. Cette transparence des prix a facilité la coopération entre elles. Le ministère de la Justice des Etats-Unis a eu gain de cause dans une action intentée contre la base de données américaines des tarifs de transport aérien, pour empêcher les compagnies aériennes d'échanger de l'information sur les tarifs qu'elles ont l'intention d'offrir volontairement.

En outre, le fait que les réseaux des compagnies aériennes soient en général en concurrence les uns avec les autres dans un grand nombre de marchés "de paires de villes" est susceptible d'encourager la collusion, car les compagnies peuvent réagir à une réduction d'un tarif convenu sur un marché en frappant sur un autre où la compagnie responsable de cette réduction est vulnérable. Des études ont démontré que le nombre de marchés sur lesquels les réseaux des compagnies aériennes se rencontrent est un facteur qui entre en ligne de compte dans la fixation des tarifs.

Comme dans toute industrie, les entreprises en place ne restent en général pas passives face aux nouveaux entrants. Plusieurs caractéristiques du transport aérien confèrent de la crédibilité à une réaction agressive des compagnies en place à l'égard des nouveaux entrants, ce qui a un effet dissuasif sur ces derniers. Un nouvel entrant (sauf peut-être s'il offre ses services à partir de son propre aéroport-pivot) ne bénéficiera probablement pas de trafic de rabattement, ne sera pas en mesure d'offrir la même fréquence de service (tout au moins au début) ni d'offrir un programme de fidélisation intéressant. En revanche, le transporteur en place peut renforcer son avantage concurrentiel en réaménageant sa grille horaire de façon à coincer les vols du nouvel entrant. Il peut également accroître son offre de sièges à tarif réduit sans devoir nécessairement augmenter le nombre de vols. Ces actions sont relativement peu coûteuses et, surtout si elles ont pour effet d'entretenir une réputation d'agressivité à l'égard des nouveaux entrants, peuvent avoir un effet sensible. L'autorité antitrust italienne a fait état d'une action qu'elle a intenté contre Alitalia au motif que celle-ci avait fait preuve d'un comportement prédateur à l'égard de ses petits concurrents Adriatica et Meridiana. Les Etats-Unis ont également mentionné une poursuite intentée par American Airlines contre trois transporteurs à tarif réduit, Vanguard Airlines, Sunjet et Western Pacific.

Dans de nombreux pays européens, les compagnies en place demeurent sous le contrôle de l'Etat. Plusieurs d'entre elles ont bénéficié de l'aide publique ces dernières années. Il y a donc lieu de croire que ces compagnies ne sont pas soumises à la même rigueur budgétaire que celles qui appartiennent à des intérêts privés. Dans ce secteur, comme dans d'autres, cette situation budgétaire privilégiée peut avoir un effet dissuasif sur les nouveaux entrants potentiels, car l'entreprise en place peut décider de subir des pertes pour faire face à de nouveaux concurrents.

C'est en partie pour cette raison que les transporteurs des pays de l'UE ont lancé très peu de nouveaux services sur le marché intérieur les uns des autres.

- (8) *Bien que tous les pays aient affirmé que le droit de la concurrence s'applique à cette industrie, certaines caractéristiques de l'application du droit de la concurrence lui sont propres. Tout comme en ce qui concerne les fusions transnationales, les alliances internationales de compagnies aériennes peuvent être assujetties au droit de la concurrence de plus d'une juridiction, ce qui risque de donner lieu à des décisions ou à des recours manquant de cohérence, et souligne la nécessité d'une coopération entre les autorités de la concurrence.*

Dans tous les pays de l'OCDE, l'autorité nationale de la concurrence peut faire appliquer le droit de la concurrence pour éviter les comportements anti-concurrentiels. Dans certains pays, d'autres organismes (tels que l'organisme de réglementation du secteur concerné) sont également investis du pouvoir partagé ou parallèle d'appliquer les règles de la concurrence et d'élaborer et de promulguer de nouvelles règles dans ce secteur. Par exemple, le ministère des Transports des Etats-Unis a récemment proposé de nouvelles règles relatives à la "pratique d'exclusion déloyale" qui permettraient d'exercer un contrôle sur la tarification prédatrice. Au Canada, le droit des transports permet à l'Etat de suspendre l'application du droit national de la concurrence pendant une période limitée de 90 jours. Cette disposition a récemment été invoquée au cours du débat sur l'avenir d'Air Canada et des Lignes aériennes Canadien International.

Comme dans d'autres secteurs de l'économie, les fusions et alliances internationales peuvent être assujetties à plusieurs juridictions, ce qui peut donner lieu à des décisions ou à des recours manquant de cohérence. Le BIAC a notamment mis en évidence dans ses interventions la nécessité d'une coordination et d'une coopération entre les autorités de la concurrence. A titre d'exemple, il a été souligné que l'alliance AA/BA a été examinée par quatre autorités différentes (ministère de la Justice et ministère des Transports des Etats-Unis ainsi que l'OFT du Royaume-Uni et la Commission européenne). On a fait valoir que les difficultés avaient été exacerbées par le fait que malgré l'accord de coopération qui existe entre la CE et les autorités américaines de la concurrence, rien de tel n'existait avec le ministère américain des Transports.

- (9) *Les actions visant à favoriser et à préserver la concurrence dans le transport aérien doivent être examinées à la fois du point de vue de la concurrence et de celui de la réglementation. En particulier, la concurrence dans le transport aérien pourrait être préservée et renforcée par les mesures suivantes :*
- a. continuer à assouplir les contraintes réglementaires sur la concurrence, notamment au plan international, y compris par exemple en appliquant les principes du commerce international de transparence et de non-discrimination dans un contexte multilatéral ;*
 - b. se pencher sur les mécanismes d'investissement dans la capacité aéroportuaire et d'attribution de cette capacité limitée, notamment en ce qui concerne les nouveaux aéroports, l'expansion des aéroports existants et les mécanismes nécessaires pour faire en sorte que les installations soient accessibles aux entrants à des heures stratégiques ;*
 - c. examiner minutieusement les propositions de fusions et d'alliances, en usant judicieusement des recours prévus pour compenser les effets anti-concurrentiels, et envisager le démantèlement ou la séparation en cas de position dominante ;*
 - d. examiner attentivement les programmes pour grands voyageurs et les autres programmes de fidélisation ;*

e. contrôler rigoureusement les comportements prédateurs ainsi que les autres pratiques anti-concurrentielles.

Bien que la libéralisation menée jusqu'à présent ait mis en évidence les avantages que la concurrence comporte pour le transport aérien, l'expérience a démontré que cette concurrence est également sensible aux obstacles réglementaires et à l'activité anti-concurrentielle des compagnies en place. Pour tirer pleinement parti des avantages que l'on peut en escompter, il importe à la fois de poursuivre la réforme de la réglementation et de veiller à l'application du droit de la concurrence.

Une réforme plus poussée de la réglementation devrait faire comprendre une plus grande libéralisation, surtout au plan international, et être menée éventuellement dans le cadre de négociations multilatérales. Le système actuel d'accords bilatéraux n'est pas conforme aux deux principes fondamentaux du système des échanges internationaux, à savoir la transparence et la non-discrimination. La réforme de la réglementation doit également lever les obstacles à l'entrée et mettre un terme aux contraintes de capacité grâce à des investissements dans des projets d'expansion d'aéroports, améliorer les installations dans les aéroports sous-utilisés et faire en sorte que les entrants aient accès à cette nouvelle capacité ou à la capacité actuelle quand elle sera disponible.

Il ressort de la table ronde qu'une plus grande libéralisation ne saurait à elle seule être garante d'une concurrence efficace dans le secteur du transport aérien. La libéralisation du transport aérien doit aller de pair avec une application effective des règles de la concurrence, qui comprend notamment le contrôle minutieux des projets de fusions et d'alliances, le contrôle des pratiques tarifaires prédatrices et l'examen attentif des programmes de fidélisation.

S'agissant des fusions et des alliances, les autorités de la concurrence ont proposé des mesures variées pour maintenir une concurrence efficace, notamment l'obligation de se dessaisir des créneaux, des dispositions assurant l'accès aux systèmes informatisés de réservation et aux installations aéroportuaires ainsi qu'une obligation d'assurer des correspondances intercompagnies. Dans certains cas, l'abandon de créneaux ne suffira peut-être pas pour dissiper toute inquiétude relative à la concurrence. Cela tient à ce qu'il est extrêmement difficile de lancer un nouveau service point à point sur la route inter-pivot d'un réseau existant, surtout pour un opérateur qui ne possède pas lui-même d'aéroport-pivot à l'une ou l'autre extrémité de la liaison. La table ronde a révélé certaines divergences de vues entre les organismes quant aux autres solutions qui devraient être imposées. Par exemple, l'UE a préconisé de limiter plus rigoureusement la part de marché sur les routes stratégiques qui suscitent des préoccupations du point de vue de la concurrence, tandis que les États-Unis ont opté pour un système de segmentation, en vertu duquel les membres d'une alliance ne seraient pas en mesure de coordonner les tarifs non soumis à restrictions de la classe économique, de la classe affaires ou de la première classe pour les passagers qui achètent leurs billets aux États-Unis.

Au moins une autorité de la concurrence a avancé que les programmes d'encouragement des agents de voyages pouvaient être anti-concurrentiels. En outre, plusieurs pays ont noté que les programmes pour grands voyageurs pouvaient également avoir des effets contraires au jeu de la concurrence qui dépassent les avantages de ces programmes pour les consommateurs. Des mesures ont été proposées pour limiter ces effets, et notamment d'exiger des compagnies en place qu'elles accordent à leurs concurrents l'accès à leurs programmes pour grands voyageurs.

Enfin, la table ronde a mis en évidence la nécessité d'un examen minutieux des autres comportements potentiellement anti-concurrentiels, tels que la tarification prédatrice et d'autres pratiques d'exclusion ou le refus d'accorder l'accès aux installations de maintenance, aux services d'escale, aux installations terminales ou à l'équipement de réservation et de billetterie.

BACKGROUND NOTE

by the Secretariat

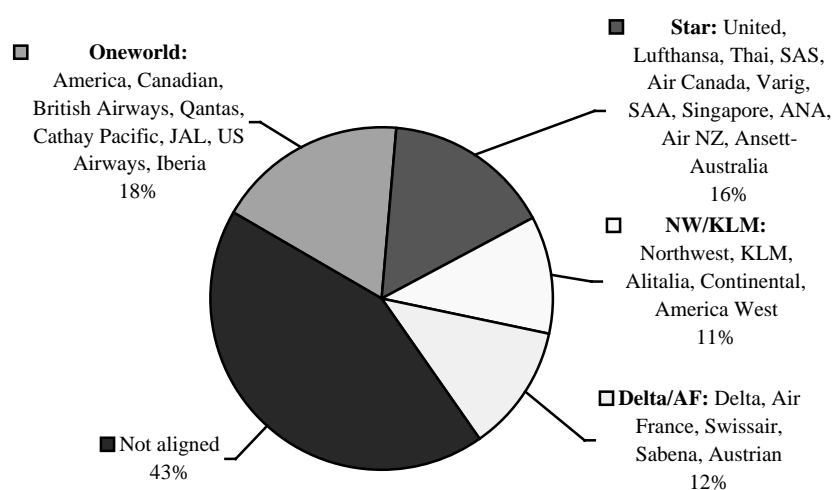
1. Introduction

Although agreements and alliances between international air carriers have long been a feature of the airline industry, the last few years has seen a rapid expansion in the number of such alliances and, more importantly, a deepening of their scope and depth, raising fundamental questions about their effect on international air services competition.

The number of international alliances virtually doubled in the four years 1994 to 1998. In 1998 there were more than 500 alliance deals between individual airlines, up from 280 in 1994. Increasingly alliances are moving beyond codesharing and joint marketing agreements, and, in some cases, amount to a virtual merger, despite national rules which forbid foreign ownership.¹

Over the last five years the evolving international alliances appear to be crystallising around four major international groupings, accounting for two-thirds of the total traffic, as illustrated in the following chart.

Figure 1: Global airline alliances



Share of world traffic, 1998, %

Source: *Economist*, "Flying in circles", 17 July 1999

The growth of major international airline alliances raises significant competition issues. Although many alliances enhance efficiency and service quality, and therefore are pro-competitive, alliances often also significantly reduce competition in certain markets.

This paper sets out to explore the nature of competition in the airline industry, with a special focus on alliances and mergers: How does competition in the airline industry operate? Are there special features of the airline industry which foster anti-competitive conduct? Are there special reasons to be concerned about the exercise of market power? In what ways do airline mergers and alliances make the situation worse? Finally, what regulatory and competition remedies might enhance the level of competition in the industry in the face of a major merger or alliance?

The paper is organised into four parts. The first part provides a brief overview of the airline industry – the services it provides, its organisation and the regulatory regime within which it operates. The second part focuses on the cost and demand characteristics of the airline industry and the implications for long-run airline competition in air services. The third part examines the nature of cost and demand in vertically related markets for airport services and computer reservation systems. The fourth part identifies policies and competition remedies, which can enhance the overall level of competition in the sector.

The key points of this paper can be summarised as follows:

- in the airline industry markets are usually defined along city-pair lines. The airline industry as a whole provides a very large number of distinct services in many thousands of city-pair markets. The level of competition (both within air transport services and from other transport services) differs widely between city-pair markets and between different classes of consumers. Time sensitive (business) passengers typically are less willing to substitute for alternative times or paths than non-time-sensitive (leisure) passengers. Competition concerns primarily focus on time-sensitive travellers flying over non-stop routes;
- domestic deregulation has removed barriers to entry and exit and controls on fares and services in several but not all OECD countries. At the international level, however, air travel is regulated through a web of bilateral agreements, which can significantly restrict entry, and the level of services provided. A few countries have negotiated “open skies” agreements, which do not restrict entry or services. Even such “open skies” agreements do not typically permit entry from foreign (third country) airlines or allow cabotage. There remains room for significant further liberalisation of international air services. In addition, even in those countries which allow unrestricted new entry, capacity constraints at many airports limit the ability of new airlines to establish services;
- economies of scale and scope in the airline industry give rise to key observable features of airline competition. Airline networks tend to be organised into a hub-and-spoke structure. There are important economies of scope associated with the provision of services at a hub. Airlines foster demand-side economies of scope through loyalty programs (such as frequent flyer plans and travel agent incentive schemes). These economies of scale and scope give larger airline networks advantages over smaller networks and give rise to a strong tendency towards hub dominance;
- competition tends to be limited and prices tend to be higher on non-stop “spoke” routes (to and from hubs). Airline networks tend to only fly to their competitors’ hubs from their own hubs. Competition is most effective (and prices lower) for non-time-sensitive passengers on longer routes with several alternative connecting paths. In practice the threat of new entry onto a route acts as only a weak discipline on prices;
- although the most important capital inputs in airline services (aircraft, slots or gates) can be leased without incurring sunk costs, nevertheless there are sunk costs associated with

initiating new service on a route, raising barriers to entry. Much more important are strategic barriers to entry. Incumbent airlines respond vigorously to new entry by cutting price and expanding the frequency and quality of service. If the incentives for loyalty are sufficiently strong, the incumbent need not match the entrant's prices and still may divert business away from the entrant. If the airlines compete in many different markets, there are strong advantages in developing a reputation for responding vigorously to new entry;

- the economic effect of airline mergers and alliances depends upon the nature of the merging networks. A merger of two networks, which do not overlap, has the potential for enhancing efficiency (by enhancing the scope of “seamless” service) at the risk of reducing the number of potential entrants into the network's markets. In the case of international alliances, regulatory restrictions prevent competitive entry by a foreign airline into a domestic market, so an alliance between two non-overlapping networks has fewer anti-competitive effects. A merger or alliance of two overlapping networks has significantly greater potential for anti-competitive effect, especially on overlapping non-stop (hub-hub) routes and overlapping connecting (*i.e.*, not non-stop) routes;
- the provision of air transport services requires a host of other vertically related services, including airport take-off and landing slots, gates, and baggage handling, maintenance and computer reservation systems. Many of these other services cannot sustain competition for various reasons. Where an airline is vertically integrated with a firm, which is dominant in the provision of such services (for example, a firm that has a dominant position in slots), the incumbent firm may use that dominant position to prevent the growth of competition. Alliances or mergers between firms which, jointly hold a dominant position in the provision of these services (such as gates at a specified airport) have the potential to significantly reduce competition;
- the development and maintenance of effective competition in the airline industry requires both effective liberalisation and effective, sensitive antitrust enforcement. Liberalisation policies should seek to lower barriers to entry (ensuring there are no barriers to the establishment or expansion of airports or airlines whether foreign or domestic). Competition policies should seek, as in other markets, to prevent anti-competitive effects of agreements or mergers, and to limit the ability of firms to use loyalty programs to reinforce the benefits of size.

2. The airline industry

We start by briefly reviewing the airline industry - the services it provides, its principal competitors and the regulatory regime within which it operates.

2.1 *Customer classes, air services and their substitutes*

As in other industries, an analysis of the nature of competition in the airline industry starts with identification of the set of services the industry provides and the nature of the demand for those services - identification of classes of customers and the substitutes that each class of customers face. Broadly speaking, the airline industry provides air transport services. These services can be divided into two categories – passengers and freight (or cargo). For the purposes of this paper, we will focus on passenger services.

Air transport services face a degree of competition (at the margin) from other modes of transportation and communication. The set of potential substitutes for air services depends on the purpose of the travel, the time-sensitivity of the traveller and the length of the journey. In the case of business travel, for example, other forms of communication may be an effective substitute.² For shorter journeys (up to around 1000 km), other modes of transportation such as high-speed trains (where available) offer some competition to air transport³. For longer journeys air transport faces little effective inter-modal competition.

For simplicity, since most travel begins and ends at cities and since most cities are served by a single airport, markets in air transport usually focus on city-pairs, even though this measure may be both under-inclusive and over-inclusive.⁴ For example, although there are several airports serving London, with Heathrow and Gatwick being the most predominant, business travellers seem to have a preference for Heathrow over Gatwick.⁵ In this case it is more appropriate to focus on “airport-pair” markets.

Air services between two given cities can take a number of different routes and times. The set of potential substitutes will differ from traveller to traveller. Some leisure travellers, for instance, are willing to substitute for other flights in the same week, month or season. At the other extreme, some business travellers may be unwilling to fly one hour later or earlier. Travellers also differ in their willingness to take different routes, including longer routes or routes involving one or more stops. There is some evidence that business and other time-sensitive travellers may not consider one-stop service to be a reasonable substitute for non-stop service.⁶ For time-sensitive travellers, non-stop and one-stop routes appear to be in separate markets.⁷

Because time sensitive (or “business”) travellers face significantly fewer substitutes, strongly preferring specific airports (at the origin or destination), specific departure times and non-stop over connecting flights, competition concerns in the airline industry have focused primarily on the effects of anti-competitive practices on time-sensitive business travellers.

2.2 *Complementary inputs, stages of production*

The provision of air services requires the inputs of a host of other complementary services, including planes, travel agent services, computer reservation services and airport services. Airport services include take-off and landing slots, air-traffic-control services, gates, passenger handling facilities, baggage handling facilities, refuelling, maintenance, cleaning and catering services and so on.

These complementary services can be considered as vertically related inputs or stages of production. The degree of vertical integration between airlines and these inputs differs significantly from airline to airline. At one extreme, for example, British Airways is outsourcing as many of these other services as it can, so that it can concentrate on running flights and marketing. On the other hand, the Lufthansa group “includes the world’s largest maintenance company, the largest airline caterer (with 29 percent of the market), the leading air-cargo operator and a big systems company”⁸.

As we will see later, significant competition concerns have arisen in a few cases when there is vertical integration between airlines and these complementary services. When the barriers to entry into these complementary services are high (for example due to regulatory constraints) such vertical integration can give rise to opportunities for anti-competitive behaviour.

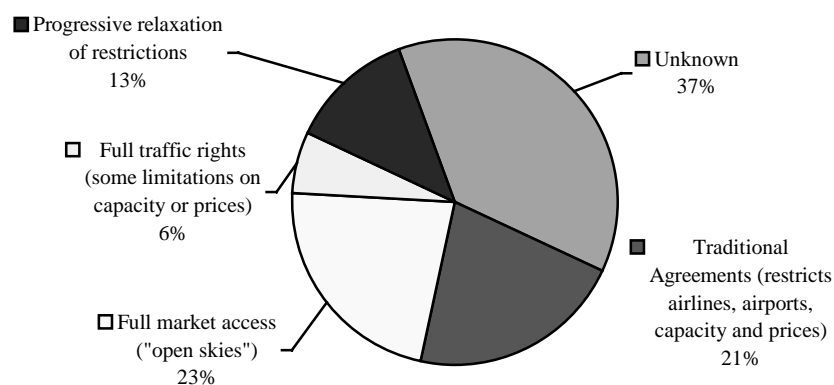
2.3 Regulatory regime

Until recently, the airline industry was (and still is in many countries) a highly regulated industry. Regulatory restrictions controlled price changes, entry and exit from routes certification of new airlines and continued certification of existing carriers. Deregulation has lifted these regulatory restrictions for domestic aviation in several OECD countries.⁹

International initiatives, such as the work of the EC in Europe and NAFTA in North America, have also brought about a significant amount of liberalisation at the international level. However, international air services between most countries are far from being fully competitive. Bilateral agreements often limit a number of aspects of competition including the number of possible flights, the number and the identity of the carriers and the airports that can be served.

Of the 80 bilateral agreements signed in 1997, detailed information was available on 50 (the remainder are kept secret). Of these 50, 17 were traditional agreements with provisions for single designation of the airlines allowed to operate named airports that can be served and government approval of capacity and tariffs. Of the 33 remaining non-traditional agreements, 18 provide full market access (where air carriers determine the points to be served, capacity and tariffs between the two countries) while five provide full traffic rights with some limitation on capacity or tariffs. ten agreements contained one or more elements associated with the progressive liberalisation of market access such as multiple designation, phased capacity increases, or unrestricted cargo operations.¹⁰

Figure 2: Types of bilateral air services agreements



Source: ICAO (1998)

Despite the liberalised nature of intra-European air services, extra-European services (flights between EU member countries and non-EU countries) are still negotiated on a bilateral basis. Although some of these agreements maintain strict restrictions on the number of flights and the airlines that can fly the routes, in the case of the US, bilateral agreements are moving towards "open skies" agreements, which place few restrictions on services. Liberal open skies agreements have been negotiated between the US and the Netherlands, Germany and a number of other European countries. However, the bilateral agreement between the US and the UK (which is the most important in terms of passenger volumes) sets limits on the frequency of services airlines can provide and prevents all US airlines except American and United from flying to and from Heathrow.¹¹

Even the open skies bilateral agreements that have been signed include provisions, which directly limit competition between EU carriers.¹² For example, under the current US/Netherlands bilateral agreement, a company like KLM cannot offer a flight Frankfurt/Amsterdam/New York¹³ at a price that would be lower than the Lufthansa/SAS/United fare for the same route without the approval of the transport authorities. In addition, an open skies agreement with the US only benefits companies established in the EU Member State concerned and whose capital is controlled by nationals from that Member State. Even if the UK and the US concluded an open skies agreement, Alitalia, for example, could not offer flights from Rome to London, and on to New York.¹⁴ The EC argues that these limitations on competition could be eliminated by allowing the EC to directly negotiate global open skies agreement with the US.

2.4 Global alliances

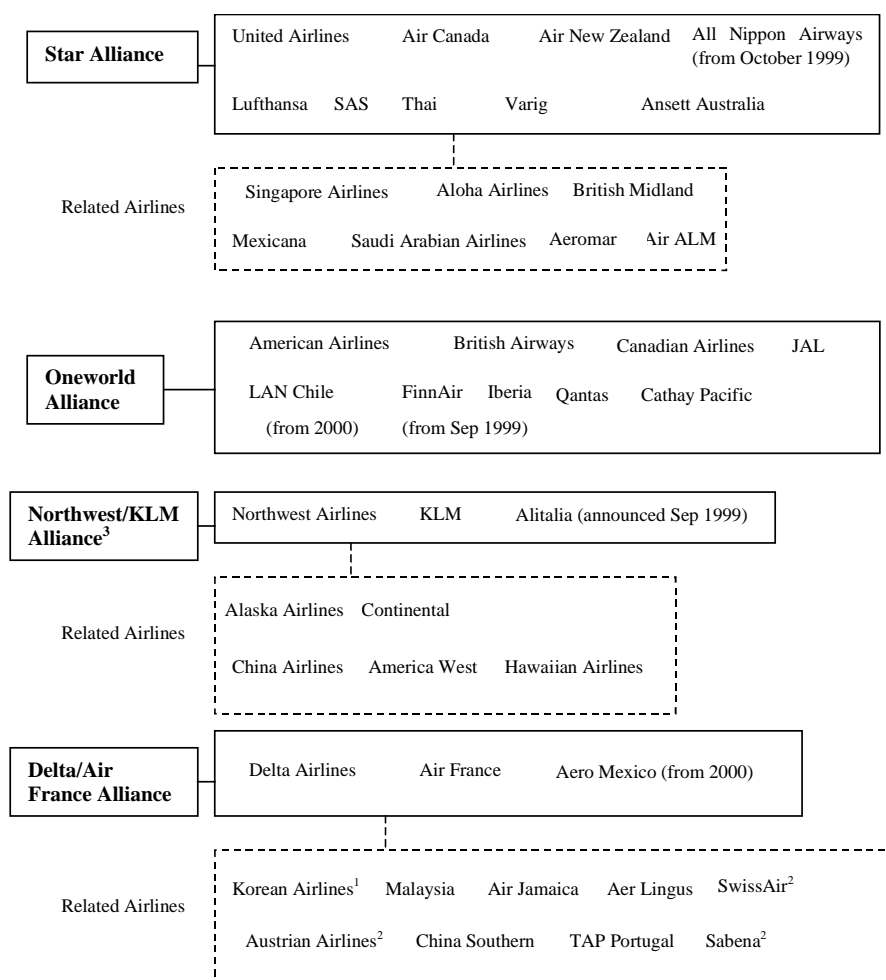
Airlines throughout the world have entered into alliances for some time. These alliances have traditionally involved various co-operative arrangements (such as codesharing, blocked space, co-operation in frequent flyer programmes, joint marketing, service and purchasing, and franchising) to strengthen or expand their market presence and to redefine or consolidate their position in an increasingly competitive environment. 70 percent of alliances include provision for code sharing and 50 percent include provisions relating to sharing of frequent flyer programmes. 15 percent also include agreement to share facilities such as catering, training, maintenance and aircraft buying¹⁵.

The most important development in the last couple of years has been the emergence of groupings of major carriers in a new form of deeper and more complex alliance extending to all aspects of the airline business. The major international alliance groupings are set out in Figure 3.

These alliances are still evolving and are still, to an extent, in a state of flux. The alliances differ from one another in their degree of co-ordination and co-operation and airlines within the alliances often maintain agreements with other non-alliance airlines, including in some case airlines belonging to different alliances. In Figure 3 an attempt has been made to distinguish between the “core” of an alliance and a “perimeter” of airlines that have more or less strong links with the alliance airlines.

The oldest and most developed alliance is the Star alliance, based on United/Lufthansa, dating from May 1997. In September 1998, American and British Airways launched the “Oneworld” alliance, subsequently adding FinnAir and Iberia in Europe and LANChile in South America.¹⁶ The third alliance, known as “Wings” is based around a ten-year joint venture between Northwest and KLM. In addition, KLM has a significant partnership arrangement with Alitalia and Northwest has an equity interest in Continental. The arrangements between these four airlines have not yet formalised to the extent of being a fully-fledged alliance. The basis for the fourth alliance was established in June 1999 with the announcement of an alliance between Delta and its long-term partner Air France. Interestingly at the same time, Sabena and Swissair who have longstanding arrangements with Delta and Air France and would therefore be likely alliance partners, announced plans to codeshare with rival airline American.

Figure 3: Global airline alliances



Notes:

1. In mid 1999 Air France and several other international airlines suspended code-sharing arrangements with KAL on account of its poor safety record.
2. Following Air France's decision to join Delta; Swissair sold its 4 percent equity share in Delta and sought to enter a bilateral code-sharing alliance with American Airlines. This move could lead to further reorganisation of the above alignments.
3. The Northwest/KLM Alliance is expected to be known as the "Wings" alliance, although this has yet to be officially announced.

Source: Airline web sites, newspaper reports.

The scope and nature of these alliances differ, but there is a tendency towards deeper alliances involving co-operation on all aspects of the airline business - from marketing to procurement. "In effect, these super-alliances are coming as close to actual mergers as aviation's Byzantine regulations allow".¹⁷

This process of "virtual merging" is most developed in the case of the Star alliance and the NW/KLM joint venture.¹⁸ The NW/KLM alliance is underpinned by KLM's 25 percent stake in Northwest and amounts to a virtual locking together of the two airlines' networks.

"[KLM and NW] were given immunity from American antitrust laws as part of a bilateral air-service agreement between Holland and America. This has allowed KLM-Northwest to set prices together, to develop and market a joint identity and to provide common incentives to travel agents. They have developed a common brand for business travellers, offering identical services, with the same sorts of seats, interiors and even dinner plates on their airliners. The integration of their timetables means that Northwest can, for instance, market services to 30 cities in Europe and the Middle East, whereas its own aircraft fly only to four. Estimates from both the US

General Accounting Office and the Boston Consulting Group suggest that KLM and Northwest have increased their combined market share across the Atlantic from seven percent to 11 percent, pulling in an extra 350 000 passengers per year, with combined revenue and cost-saving benefits of \$300 million a year”.¹⁹

The NW/KLM alliance has recently been extended with the addition of Alitalia. In September 1999 the Financial Times reported:

“KLM’s relationship with Alitalia will go even further than its link with Northwest. Their partnership will be a merger in everything but name. The two will unify not just their sales and marketing organisations, but their entire management. They will buy aircraft jointly and share profits. [The CEO of KLM] wants the two to merge within two to three years”.²⁰

These international alliances have raised serious competition concerns among competition and transport policy makers across the OECD. For example, in a major recent report, an US National Research Council committee on competition in airlines notes:

“Even more alarming to some is the proliferation of alliances between US and international carriers, often facilitated by grants of antitrust immunity to co-ordinate fares, seating capacity, schedules and marketing. Although some travellers in connecting markets might benefit from these alliances, the potential gains to travellers in mainline markets - gateway-to-gateway routes where allied airlines were once main competitors - are not evident, and it is possible these travellers are losing out. Moreover, the long-term effects of these alliances may be exclusionary, ultimately forcing some unaffiliated US airlines out of international markets by diverting feed traffic and weakening their overall route structure to the detriment of domestic competition. An issue that deserves explicit attention is whether these expanding alliances are compatible with longer-range international aviation goals, such as unrestricted entry and competition by the most efficient carriers on a multilateral or global basis”.²¹

3. The nature of competition in air services

We turn now to consider the special features of competition in air services, to assess the forms of competition that will arise in equilibrium, and the effect of mergers and alliances on that competition.

3.1 Introduction

Is the airline industry naturally competitive? Or is there a limit to the amount of competition we would expect in equilibrium? This question is of critical importance as some have alleged that the airline industry is moving from “one extreme, of regulation and state ownership, to another, of global consolidation - with little or no exposure to competition in between”.²² Is the trend towards mergers and alliances simply a reflection of market forces or the undesirable pursuit of market power?

The level of competition that an industry can sustain in equilibrium depends upon both demand and supply side characteristics of the industry. Focussing first on economies of scale, it is well known that an industry will not be able to sustain effective competition when there are traditional economies of scale in costs, that is, when a firm’s average cost is declining as its output increases. An industry will also not be able to sustain competition when there are economies of scale on the demand side, that is, when the demand for a firm’s products increases with the output of the firm.

Economies of scope, on the other hand, (whether on the demand side or the cost side) need not impact on the level of competition an industry can sustain. An industry which exhibits traditional economies of scope – where the costs of producing a range of products in combination is less than producing any subset of them – or an industry which exhibits economies of scope on the demand side – where the demand for a range of products is larger than if the products were produced individually - may still be competitive. However, in either case, entry is not possible on the scale of an individual product line. To be competitive, each firm in the industry must produce the full range of products to exploit the economies of scope.

When economies of scope are combined with even limited economies of scale in some product competition can be unsustainable across a wide range of products. If, for example demand is sufficiently small in some products so that the market for those products cannot sustain competition, in the presence of economies of scope the firm, which produces those products, has a competitive advantage in the production of a wide range of other products. In industries in which there are strong economies of scope, the presence of one or two markets, which cannot sustain competition, will imply that competition cannot be sustained over large parts of the industry.²³

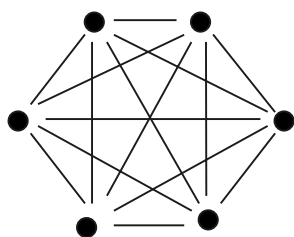
These concepts have direct application in the airline industry. Studies have found that, beyond a certain level of traffic in a city-pair market, the airline industry exhibits constant returns to scale.²⁴ However, as noted earlier, it is clear that there remain limited increasing returns to scale in air services. Larger jet aircraft have lower per passenger operating costs than smaller aircraft. Up to a minimum level of traffic, average costs in a given city-pair market are decreasing. As we will see, there is both demand and cost side economies of scope in the airline industry. Airlines with larger networks have a powerful competitive advantage, especially on routes to and from their hub airports. As a result, competition between airlines in a deregulated airline market appears to take the form of competition between large regionally based airline networks, centred on one or more hubs, with a dominant position on routes to and from those hubs.

3.2 *Hub-and-spoke organisation*

As mentioned earlier, the airline industry features a definite minimum efficient scale of operation. Larger planes tend to be more efficient (on a unit cost basis) than smaller planes. An airline which faces insufficient demand in a particular market to fill a large plane faces a distinct cost disadvantage. The existence of even limited economies of scale in air services has a dramatic effect on the optimal route structure. In particular, as has often been observed, the existence of some economies of scale transforms the optimal route structure from a “point-to-point” network to what is called a “hub-and-spoke” network.

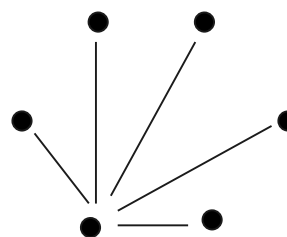
The effects of hub-and-spoke operation on operating costs can easily be illustrated. Suppose an airline provides air services between a set of n cities. In the absence of economies of scale, the airline could provide these services with direct connecting flights between each pair of cities (serving $n(n-1)/2$ routes). However, if there are economies of scale and if some of the routes do not generate sufficient traffic to allow operation at the minimum efficient scale, total unit costs can be lowered by reducing the number of routes, increasing traffic on the remaining routes. In fact, the same n cities, with no loss in services, can be served with just $n/1$ routes, reducing the total number of routes served and increasing the average traffic on each route by a factor of $n/2$. This is illustrated in the case of six cities as follows:

Point-To-Point Network



15 distinct routes served

Hub-and-Spoke Network



5 distinct routes served

Even where there is enough traffic on a route for the minimum efficient scale to be obtained, hub-and-spoke operation may allow an increase in the frequency of flights (and therefore an increase in the overall level of demand) without any one flight dropping below the minimum efficient level of traffic. In addition, hub-and-spoke operation may allow service to be provided to airports for which the volume of traffic to any other single city would be insufficient (under point-to-point operation) to justify service.

“All major airlines now have one or more hubs at which many of their long-distance passengers change planes. This approach has allowed carriers to fill a higher proportion of the seats on their planes and to increase flight frequency of non-stop routes between their hubs and other airports. ... For most travel between non-hub airports, the choice of departure times has been enhanced substantially by hub-and-spoke operations. A thinly travelled route that had one or two non-stops per day under regulation is likely now to have ten or more possible change-of-plane routings through different hubs spread throughout the day. Finally, hub-and-spoke operations have contributed to the increase use of satellite airports such as Oakland, Burbank or Orange County in California.”²⁵

Pressures towards hub-and-spoke operation are strong, but there are also offsetting cost and demand factors. Although hub-and-spoke operation lowers unit costs by increasing load factors, it also increases the distances, raising the cost and the time taken for the average journey. As we noted earlier, for time sensitive passengers a connecting service (through a hub) may not be an adequate substitute for a non-stop service. In some countries, the geographic dispersion of cities will not be conducive to hub-and-spoke operations. Furthermore, domestic and international regulatory restrictions on air services often prevent airlines from fully exploiting a hub and spoke structure.²⁶

3.3 *Traditional cost economies of scope*

At first sight it might be thought that the cost advantages that arise from hub-and-spoke operation imply that a larger network has a cost advantage over a smaller network or a point-to-point operator, on the basis that smaller (e.g., point-to-point airlines) cannot benefit from the feeder traffic which maintains load factors and cost efficiencies on trunk routes. But this argument is incomplete. Since passengers can change airlines as well as planes at a hub airport, a point-to-point airline could still benefit from feeder traffic supplied by other airlines operating other spoke routes into and out of the hub. In order for there to be economies of scope it must be that there is some cost advantage in operating within a single airline two or more of the spoke routes in and out of a hub.²⁷

There are three possible sources of such cost efficiencies. These are:

- first, the spoke routes in and out of a hub are complementary inputs in the provision of end-to-end transport services. Spoke routes are therefore in a vertical relationship to one another. If competition on each spoke is less than perfect, the airlines operating each spoke will mark up prices above marginal cost. These mark-ups accumulate, leading to the problem known as “double marginalisation”. Vertical integration can eliminate this inefficiency;
- second, a traveller may be subject to delays or problems for a variety of unforeseeable reasons, such as weather or overbooking. Where the travel involves several different segments, a delay or unforeseeable event on one segment will lead to problems making connections on other segments. Where the segments are operated by independent airlines the traveller may face higher costs or difficulties completing the travel. In addition, individual airlines may not take into account the effects that overbooking will have in disrupting bookings on future segments. Alliances between the airlines can ameliorate these problems. Vertical integration lowers these transactions costs associated with providing a “seamless” end-to-end service desired by travellers;
- third, co-ordination of flights, gates, arrival and departure times necessary to provide an efficient hub-and-spoke service may require relationship-specific investment. The provision of an efficient hub-and-spoke system requires relatively close co-ordination at the hub. Arriving flights must be timed to co-ordinate with out-going flights. Incoming flights must arrive at gates, which are in relatively close physical proximity to out-going flights. Baggage from the incoming flight must be efficiently interlined to the outgoing flight. Co-ordinating airlines must therefore make certain relationship-specific investments. Having made these investments, the airlines are exposed to strategic behaviour by the other airlines, again raising transaction costs. These issues can be resolved through detailed long-term contracts or through vertical integration.

As a result of these effects, there are distinct cost efficiencies (i.e., economies of scope) in hub operations. Brueckner and Whalen (1998) find that transatlantic routes involving several legs are 18-28 percent cheaper when provided by a single network than when the same route is provided by two or more non-aligned carriers. In an earlier paper, Brueckner, Dyer and Spiller (1990) found that following a merger between Northwest and Republic prices for passengers travelling through, but not stopping, at Minneapolis (the shared hub) fell by 1.5 percent relative to industry average prices between the second quarters of 1986 and 1987.²⁸ Liu and Lynk (1999) summarise the overall position as follows:

“[US] cost studies using data before deregulation showed no cost advantages to airline systems that have reached the size of trunk carriers. By developing the hub-and-spoke network systems, carriers seem to have managed to gain economies of scope by exploiting technical economies of density more sufficiently than before”.²⁹

3.4 Loyalty programs and demand-side economies of scope

In the airline industry traditional cost economies of scope arising from a merger or alliance may not be as important as demand-side economies of scope. We have already seen one form of economies of scope - travellers prefer that one journey be on a single airline - this reduces the hassles that might arise when switching between airlines from delays, overbooking or baggage handling problems. The desire to provide “seamless” end-to-end service alone can therefore be a strong incentive for network expansion.

In addition, and equally importantly however, airlines can, through marketing practices, ensure that demand is greater the larger the airline's network and the more frequent its services.

As in other industries, the presence of demand side economies of scope (also known as "network effects") requires that there be a cost of switching between suppliers. In the absence of switching costs customers travelling from A to B would have no interest in knowing whether or not the airline also served routes C to D or C to E, just as a consumer looking for one type of breakfast cereal typically does not care whether the manufacturer also makes other types of cereal or entirely different products. Where there are switching costs, on the other hand, consumers care about the full range of products sold by each firm.³⁰

Airlines attempt to raise the cost of switching between airline companies in three ways, which are collectively called "loyalty programmes":

- through frequent flyer programs, which reward loyal customers with free travel;
- through travel agent incentive schemes (such as the so-called travel agent commission override or "TACO" programs) which reward travel agents for directing the bulk of their travel towards a specific airline; and
- through negotiating special arrangements with large corporate customers who provide incentives for taking all (or nearly all) travel with a single airline.

In passing, we may add that larger airlines can enhance their demand relative to smaller airlines in other ways:

- for example, if airlines allow a traveller to change but not cancel a reservation at the last minute, a traveller with uncertain plans will prefer an airline with more frequent flights to the same destination than an airline with one flight per day;
- If airlines charge a fixed annual fee for special services such as waiting areas or lounges or ground transportation services and if a current ticket or boarding pass on one of the airline's flights is necessary to gain access to the lounge, the charge for the lounge acts like a fixed cost of being "connected" to more than one airline.

3.4.1 *Frequent flyer programs*

Frequent flyer programs operate like a volume discount. Once a customer has flown on a particular airline with a frequent-flyer program, the value of subsequent flights is enhanced by the increased opportunities for free travel. "Because the marginal value of the reward increases as the customer builds up miles or points on a single airline, frequent-flyer programs encourage travellers to choose the airline that they are most likely to fly on in the future".³¹

The size of the loyalty effect will depend upon how rapidly free travel is earned, on the size of the airline's network and on the location of the customer. The larger the airline's network, the more valuable is the free travel, as more opportunities are available to the frequent traveller (the nature of the destinations may also matter). The larger the number of flights offered by an airline at the customer's home city, the more likely the customer is to travel on a route served by the airline, the faster the accumulation of awards, the greater the range of possible free-travel destinations and the more likely there will be a non-stop flight to the desired destination. Because airlines offer the largest range of non-stop flights from their

hub cities, frequent-flyer programs are especially likely to be important at raising the demand for an airline at its hub cities.³²

Since customers ultimately pay for the free travel in higher prices for paid travel, we may ask why airlines don't simply offer lower fares without the carrot of free travel. The reason is that most (especially business) travellers do not pay for their tickets themselves. "Frequent flyer programs are targeted primarily at business travellers, taking advantage of the principal-agent problem resulting when the traveller, monitored imperfectly by his employer, does not make the efficient trade-off between lower prices, or reduced travel time, and extra frequent-flyer plan bonuses³³. In essence, the frequent flyer bonus is a kickback to the purchasing agent, in this case, the employee. In a survey of travel agents conducted by the US General Accounting Office³⁴, more than half said that their business customers select flights to match their frequent flyer program 'always or almost always'³⁵.

3.4.2 *Travel agent incentive schemes*

Airlines may also be able to enhance the demand for their services through incentives on travel agents:

"What frequent flyer programs are to business travellers, travel agent commission overrides (TACOs) are to travel agents. Most travel agents earn increased commission rates from at least one airline in return for steering passengers to those airlines. ... There is a widespread belief within the industry that TACOs are most effectively used by the dominant airline in an area³⁶. Just as with frequent-flyer plans, the rewards for increased bookings on an airline are designed to encourage the agent to concentrate bookings on a single carrier".³⁷

Travel agent incentive schemes appear to be particularly effective at increasing demand. For example, in 1995 Air South, a low-fare airline which was concerned about its inability to attract business travellers on its routes in the south east of the US, hired a private consultant to test the extent to which travel agents may have been steering traffic away from Air South.

"The consultant found that agents in some cities dominated by one airline often did not provide Air South's competing flight options in response to anonymous inquiries, even though those options were listed in CRSs. In Miami, for example, travel agents did not initially inform callers of available Air south flights 56 percent of the time, and even after the lowest fare was requested, the agents did not mention Air South 30 percent of the time. Instead the agents frequently recommended flights by American Airlines, the largest carrier in Miami."³⁸

The GAO also reports the experience of Midwest Express and Southwest Airlines, both of which were forced to exit routes to and from Detroit in large part because of the strength of Northwest's commission override program in Detroit at retaining the business market.³⁹ As a result of competition concerns the DoJ opened an investigation into TACOs in 1994. The investigation was closed without prosecution in 1996.⁴⁰

3.4.3 *Directly negotiated loyalty schemes*

Airlines are also able to directly negotiate for loyalty with large corporate customers. "A significant and growing portion of business traffic travels subject to contract fares negotiated between the airline and a corporation's travel manager. Most travel managers appear to favour airlines with extensive route networks that are easily accessible from major company locations.

Airlines that do not offer attractive route networks with adequate non-stop service will not be able to obtain a corporate contract even if they offer a larger discount level. Airlines with more extensive route networks also have an advantage over smaller airlines with less extensive networks at a given city because carriers often make any corporate deal contingent upon the corporation agreeing to meet target market shares in multiple city pair markets.”⁴¹

The US DoJ summarises:

“Frequent flyer preferences and corporate discount programs will tend to reinforce business passengers’ preference for the non-stop hub carrier in any given city pair market. For example, for business passengers originating in Dallas, American’s hub strength gives it by far the most attractive frequent flyer program. Moreover, Dallas-based corporations with extensive travel requirements will prefer to negotiate with American for a corporate travel contract since American is the airline best positioned to serve their travellers’ needs. American can and does reinforce that preference by requiring corporations to use American for all their travel needs as a condition to granting discounts. If an airline such as United wished to attract Dallas-based business passengers away from American’s non-stop DFW-LON service onto its DFW-ORD-LON connecting service, United’s frequent flyer program would be of little help, and United’s corporate travel discounts would have to be significantly larger than American’s.”⁴²

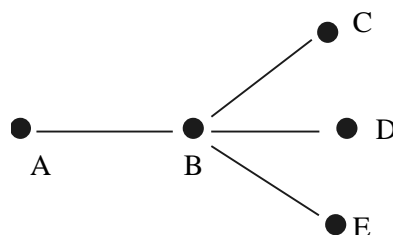
In the presence of loyalty programs, airlines are able to raise the demand for their services by expanding the range and frequency of services. In effect, there exists what we might call “demand-side economies of scale and scope”. This effect is particularly important for flights originating or terminating at hub airports.

3.5 *Implications of economies of scope for the airline industry*

The previous sections have emphasised the existence of certain cost and demand side economies of scope in the airline industry. These economies of scope have two important effects.

The first is that since the demand for an airlines’ services increases with the range and frequency of services it offers, there are clear incentives for an airline to merge or enter into alliances with other airlines. The incentives are especially strong for a merger or alliance with airlines, which either share the same hubs (such as feeder airlines); or with complementary route networks. There is therefore a tendency for airline dominance of hubs.

The second important effect is that, due to the economies of scope, non-stop competition may not be sustainable on spoke routes (except non-stop routes to another network’s hub, which may be served by the networks at both ends). Consider competition on the route A-B in the following network in which B is the hub and the incumbent network also services C, D and E:

Figure 4: A stylised hub-spoke network

The economies of scope identified earlier have a number of effects on competition in the route A - B:

- the cost-side economies of scope imply that the incumbent airline has a cost advantage in the provision of connecting services A-B-C, A-B-D and A-B-E. (Specifically, for flights in either direction on these routes, the incumbent airline can eliminate the double marginalisation problem and better co-ordinate the arriving and departing flights to provide seamless operation). With this cost advantage, the incumbent will be able to price the connecting services in such a way as to ensure that it captures all the connecting or “feeder” traffic. If the incumbent can cut off the competitor from the feeder traffic, the competitor is restricted to only A-B traffic (so-called “local” traffic). In some cases the local traffic alone may be insufficient for the entrant to sustain a viable service. Even where there is sufficient traffic to sustain a stand-alone service, the entrant will not have the same total traffic volumes and will be unable to match the flight frequency of the incumbent;
- even if there is sufficient local traffic to sustain some A-B flights, the benefits of the loyalty programs give the incumbent airline a strong competitive advantage in flights originating at B, especially among frequent-flying high-margin travellers. As a result the incumbent can offer a more attractive service simply by matching the price offered by the entrant. Conversely, the entrant will need to offer a sizeable discount below the incumbent to attract a sufficient volume of traffic. In the most extreme case, the entrant will attract little of the traffic from B to A, thereby raising its average costs for the A-B round-trip service.

Competition will be sustainable on the A-B route in the event that either (i) the competitor airline has significantly lower costs than the incumbent, or (ii) the competitor offers a significantly different product than the incumbent (differentiating itself in some other way) or (iii) A is a hub for the competitor airline, giving it a degree of countervailing power against the incumbent airline.

This analysis suggests the following three predictions:

- *First, an airline is likely to fly a large proportion of all the non-stop routes flown out of its hub(s).*

This is confirmed by the trend towards single-airline dominance of airports. “As airlines have moved from a linear route structure to a hub-and-spoke method of delivery, many airports have become dominated by a single carrier. In nine of the top 25 airports, the dominant carrier is responsible for over 50 percent of the enplanements at the airport.”⁴³

- *Second, airline networks are likely to be dominant and to enjoy market power on non-stop routes originating or terminating at their hubs.*

Borenstein notes: “It has been clearly and frequently demonstrated that average prices for local traffic at concentrated airports are significantly higher than prices on other routes⁴⁴. ... Econometric studies have found this effect while controlling for traffic volume, business/tourist mix, the number of plane changes a passenger must make, heterogeneous costs of airlines, concentration and market share on specific routes, airport-specific congestion, and many other factors. The effect, however, does not carry over to itineraries in which the passenger just changes planes at concentrated airports; “through” passengers using these airports pay prices about equal to the national average”.⁴⁵

Evans and Kessides agree: “[A] carrier that dominates traffic through a city tends to receive significantly higher prices on trips beginning or ending in that city. This result has now been replicated in a number of studies. ... The dominant firm receives a 4.7 to 16 percent price premium on traffic originating or ending at the dominated city. This price effect is significantly larger than any price increase caused by a lack of potential or actual competition that we estimated at route level.”⁴⁶

- *Third, hub-hub routes (routes from one network’s hub to another network’s hub) are likely to be served predominantly or exclusively by the networks at each end. In this case, both networks are likely to enjoy market power on these routes.*

Borenstein notes: “The hub-and-spoke networks have evolved to the point where one airline will generally fly to another airline’s hub only from its own hub. United, for instance, offers non-stop service to Atlanta – Delta’s major hub – only from Denver, Chicago-O’Hare and Washington-Dulles – three of United’s four largest hubs. ... The markets for travel to and from hub airports tend to be more concentrated than at non-hub airports”⁴⁷

“Effective new entry for the provision of non-stop service in the hub-to-hub markets is unlikely by any carrier without a hub at one of the endpoints of the city pair. A hub carrier ... has significant cost advantages over a non-hub carrier attempting to offer service originating at the hub airport. Building a competing hub in the same city would require considerable time and investment and is not likely to occur in response to fare increases in the hub-to-hub markets. New entry is also impeded by other factors, including difficulty in obtaining access to gate facilities; the effects of travel agent incentive programs offered by dominant incumbents; frequent flyer programs; and the risk of aggressive responses to new entry by the dominant incumbent carrier serving a particular market”⁴⁸.

For example, Northwest Airlines operates hubs at Detroit, Minneapolis and Memphis. Continental operates hubs at Newark, Cleveland and Houston. There are, therefore, nine hub-hub routes. The market share accounted for by Northwest and Continental is no less than 100 percent on seven of these nine routes (See Table 1). On the remaining two routes the market share of Northwest and Continental combined is 94 percent (Detroit-Cleveland) and 87 percent (Detroit-Newark).

Table 1: Northwest/Continental Market Share on Their Hub-Hub Routes

Route	Combined NW and CO share of non-stop flights:
Detroit-Cleveland	94%
Detroit-Newark	87%
Detroit-Houston	100%
Minneapolis-Cleveland	100%
Minneapolis-Newark	100%*
Minneapolis-Houston	100%
Memphis-Cleveland	100%*
Memphis-Newark	100%
Memphis-Houston	100%

* All of these flights are operated by Northwest

Source: DOJ (1998)

These three predictions summarise key features of the nature of competition between airline networks. As an aside, it is worth remembering that the fact that competition is limited on non-stop spoke and hub-hub routes does not mean that competition is necessarily limited over connecting flights over the same or other routes.⁴⁹ In fact, such competition can be intense.

3.6 *Entry, exit, predation, transparency and collusion*

The existence of airport dominance and dominance on spoke and hub-hub routes would not be of concern in the event of sufficiently low barriers to entry and exit. Indeed, at the time of deregulation in the US, it was proposed that because sunk costs were negligible in the airline industry (due to the fact that all necessary capital can be easily leased or transferred), the airline industry would be a good example of an industry that is “contestable”. It was proposed that even if one airline came to dominate a route it would not be able to exercise market power due to the threat of immediate and significant new entry.

It is now clear that this view was overly optimistic. Although sunk costs are low in the airline industry, they are not zero. A new entrant must invest in promotion and marketing of any new service, the costs of which cannot be recovered in the event of exit.

Research shows that although the number of potential entrants in a city-pair market does have a disciplining effect on prices, that effect is several times smaller than the effect of even a single actual competitor.

“Studies that attempt to explain cross-sectional variation in average prices find that a potential competitor in a market has from one-tenth to one-third the competitive impact of an actual competitor.⁵⁰ In retrospect, the result is not very surprising. If sunk costs are non-trivial, albeit small and an incumbent can respond in price and quantity as quickly as a new competitor can enter, then the incumbent has little incentive to respond in advance of actual entry⁵¹. Advertising and the short-run losses associated with inauguration of service on a new route seem to be sufficient sunk costs to inhibit contestability in the airline industry”.⁵²

3.6.1 *Predation*

More importantly, to an extent the airline industry favours strategic barriers to entry. Incumbent airlines can (as discussed below) deter entry through aggressive responses to new entry (which may or may not be legally labelled predation).

There have been a large number of instances of alleged predatory behaviour, especially in the US. One of the best known involves Reno Air, which operated services to the West Coast from its mini-hub at Reno, Nevada. In 1993 Reno Air entered the Reno-Minneapolis city pair market, a market that had previously been abandoned by Northwest. Northwest operates a major hub at Minneapolis. In response to this entry Northwest not only initiated Reno-Minneapolis service but also established its own mini-hub at Reno and began competing with Reno Air on flights from Reno to the West Coast. The US Department of Justice was in the process of investigating this case when, in response to intervention from the Department of Transportation, Northwest decided to abandon its overlay of Reno Air's hub.

Several features of the airline industry make an aggressive response to entry a credible threat:

- first, as explained earlier, given the cost-side economies of scope, an incumbent will be able to price in a way, which cuts the entrant off from connecting or feeder traffic. This has the effect of significantly reducing the volume of traffic, which can be contested by the entrant. If this contested traffic is small enough relative to the number of flights of the incumbent, the incumbent may be able to respond merely by expanding the number of discount seats on its existing flights, increasing load factors without adding new flights. Given that the marginal cost of these seats is small (the flights would have been operated in any case), such a response is unlikely to be found to be predatory;⁵³
- second, given the nature of the demand-side economies of scope, the incumbent's network will be more attractive than that of a small new entrant's. The incumbent may seek to further enhance these attractions in the face of new entry by, for example, offering additional frequent flyer points or increased discounts for travel agents. As a result of this competitive advantage, the incumbent will be able to drive out of the market an equally efficient entrant, even without incurring losses itself;⁵⁴
- third, earlier we mentioned that one aspect of the (cost-side) economies of scope was that each spoke route is a complementary service to other spoke routes. If a spoke route is operated by a competitor, by raising the price on that route, the competitor will reduce demand for all the other spoke routes. If, in the face of new entry, the incumbent gives way and allows an entrant to operate a spoke route, in the absence of sufficient competition on that route, the entrant's price will be above marginal cost, reducing demand on all of the incumbent's other routes. Put another way, the losses to the incumbent from abandoning one route are much larger than the profits to be earned by the entrant on that one route - the higher price on that route will lower demand and therefore profits on all the incumbent's other services. This difference in the benefit to the entrant and the cost to the incumbent enhances the credibility of the incumbent's threat to defend its spoke routes against new entry;⁵⁵
- fourth, predation (pricing below an appropriate measure of cost with the intention of eliminating a rival) may be credible when it is done with the intention of creating a reputation for "toughness" which will deter entry in the same market in the future, or in other markets. Airline networks typically compete in more than one market. An investment in earning a reputation in one market can therefore yield benefits in the form of higher returns in many

other markets. This enhances the credibility of predation. Studies have found that the number of markets in which airlines compete is a factor in explaining price differentials on certain routes. (See the discussion on multi-market contact below);

- fifth, in some OECD countries the dominant incumbent airline remains government owned. As in other industries, the government ownership may soften the budget constraint faced by the airline, enhancing the credibility of its threat to respond vigorously and sustain losses in the face of new entry.

Conventional antitrust approaches to predation recognise that an incumbent's response to new entry is an important aspect of the competitive process. Antitrust controls on the incumbent's behaviour are therefore usually relatively limited in scope. An incumbent is usually allowed to respond to new entry vigorously unless he or she prices below an appropriate measure of cost and has a reasonable prospect of raising prices to recoup the loss in the future. The fact that, in practice, incumbents have been able to raise prices following the exit of a competitor demonstrates that at least in some cases recoupment is feasible (*i.e.*, potential entry alone does not adequately discipline fares). The primary question in the airline industry is therefore the level of discounting and service expansion that should be permitted as a response to competitive entry.

The arguments set out above emphasised that an incumbent with an established hub-and-spoke network will be able to eliminate equally efficient rivals on its spoke routes even without pricing below cost. Concerns about the resulting effect on competition have led some to propose a weaker test for predation - in effect tightening the restrictions on the incumbent's response to new entry.

For example, the US Department of Transportation, concerned about anticompetitive behaviour, has proposed a test for "unfair exclusionary behaviour" in the airline industry. This test involves considering, on a case-by-case basis, whether a response to entry "is consistent with behaviour in other competitive markets, especially those in which Southwest Airlines is a competitor. In particular, when the incumbent sells a large number of seats at very low fares, or carries a large number of local passengers at the entrant's new low fares such that the entrant's total seat capacity, or passengers carried is exceeded, the DoT will (unless there are strong arguments to the contrary) institute enforcement proceedings to determine whether the carrier has engaged in unfair exclusionary practices. In addition, the DoT will analyse other types of conduct, such as bonus frequent flyer awards or travel agent commission overrides to see if incumbents appear to target entrants unfairly"⁵⁶. These proposals have attracted a substantial amount of criticism.⁵⁷

A UK economist David Starkie has proposed that, instead of focussing on defining what does or does not constitute anti-competitive behaviour, competition enforcers should simply raise the cost of predatory actions and reduce ability to recoup losses by preventing an incumbent airline from raising its prices following the exit of the new entrant airline.⁵⁸

As discussed later, in some instances, antitrust authorities have imposed restrictions on an incumbent's competitive response to entry as a condition for approving mergers and alliances.

In some cases incumbent airlines respond to entry using tools besides price and quantity. As an example, in a recent case against Alitalia, the Italian flag carrier, the Antitrust Authority ruled that the practices of Alitalia to schedule the departure of its flights five minutes before those of two small new entrants, Aliadriatica and Meridiana, made them suffer significant economic damages. The Italian Antitrust Authority argued that small air carriers do not have the logistics necessary to promptly react to such a response, nor are they able to easily accommodate their take-off and landing slots. The Authority believes

that such moves by Alitalia were also a signalling device to potential new entrants in the Italian air transport market. The Authority fined the company \$US 500 000.

3.6.2 *Price transparency and collusion*

In addition to favouring predation, there are features of the airline industry which may foster collusion - the high degree of transparency in prices and services and the large number of distinct markets in which large airlines compete.⁵⁹

The airline industry features a very high degree of transparency over prices and volumes. All of an airline's future fares are instantaneously available over computer reservation systems, to which rival airlines can subscribe. As in other industries, such transparency can be an instrument for collusion as it facilitates the detection of cheating on a cartel agreement. Borenstein notes:

“It appears to be common practice for an airline to announce, through the CRSs that its price on a certain route will increase by some amount beginning on a certain date in the future. The carrier then waits to see if others will match. If they do, the price increase is implemented. If they don't, the airline suggesting the increase will either withdraw it or push back the implementation dates. Other airlines might counteroffer with a smaller increase, effective a day after the first increase. Then the first airline may proceed with a smaller increase or counteroffer again. All of this occurs without the airlines changing prices on actual sales...”⁶⁰

“Each airline's fare on the computer reservation system for each route has a descriptive code, usually a string of five or more letters and numbers, that may contain further information about what the airline is suggesting or at which competitor a price might be targeted⁶¹. In one incident reported in the Wall Street Journal, Continental introduced a new fare on a certain route with a fare code that included “HP”, the two-letter designation for America West, which Continental appeared to be attacking with the discount. The code may have included “HP” to inform other airlines that Continental was targeting the fare cut at America West and was not interested in starting a widespread fare war”⁶²

3.6.3 *Multi-market contact*

It has long been posited that when firms face each other in a large number of markets they may compete less vigorously by allowing each other more or less exclusive spheres of influence. Put another way, the number of markets in which firms meet is a factor influencing the likelihood of oligopolistic coordination or “tacit collusion”.⁶³

This result arises from the fact that a dominant firm in an oligopolistic market has more to lose in a price war than a firm with a small market share. A firm with a small market share is therefore a threat to the margins of the dominant firm unless the roles are reversed in some other market. When each firm has one or more “home” markets in which it is dominant, it is less likely to challenge the dominant position of a rival firm in the rival's “home” market, for fear of facing competition in its home market. Such an arrangement is likely to settle down into a “live and let live” situation. Conversely, the biggest threat to such comfortable arrangements is likely to come from rival firms with no domestic dominant position.

Such a situation arises within Europe. Each of the major firms (British Airways, Air France, Lufthansa, KLM, Iberia, Alitalia and SAS) has a dominant position in its home market. Although cabotage is permitted within Europe, there has been very little new entry by these firms. The little new entry in

domestic markets that has occurred has been undertaken by smaller firms such as Ryan Air and British Midland.

Evans and Kessides (1991) find that multimarket contact in the US airline industry has a significant effect on prices, increasing average round-trip ticket prices by more than \$20.

“The case of Northwest and Midway is illustrative. In 1989, Midway Airlines cut prices in Milwaukee, an important market for Northwest. Northwest retaliated, not by matching fare cuts in Milwaukee, but by slashing fares at Midway’s Chicago hub, where the fare cuts would hurt Midway the most. The retaliation prompted Midway to end its Milwaukee fare cut earlier than planned. Passengers sued Northwest for denying them lower fares. Northwest settled the suit in 1991 without admitting wrongdoing”.⁶⁴

3.7 *Effect of mergers and alliances*

Having considered the nature of competition in the airline industry we are now in a position to consider the effect on competition of a merger or alliance.

An alliance or merger of two hub-and-spoke networks has three broad effects: it will enhance efficiency (by allowing rationalisation of the network structure and greater exploitation of the cost-side economies of scope); it will enhance demand for the network as a whole (through demand-side economies of scope); and it will reduce competition in those markets which were previously served (or could have been served) by both the merger partners. Efficient assessment of the overall effect of a merger requires taking into account each of these three effects. We will explore each in turn.

First, a merger will typically yield cost efficiencies. There are two forms of these cost efficiencies - the first comes from the rationalisation of the network, and the second from the cost-economies of scope that arise at a hub. The greatest opportunity for rationalisation arises when the networks overlap in the markets they serve. In this case, the merger will allow a strengthening of the hub-spoke arrangement by a re-focusing of the flights on the existing hubs, a reduction in the number of non-stop flights and an increase in the traffic density (and flight frequency on the overlapping spokes). This is illustrated in the following diagram. Prior to the merger there are two fully overlapping networks centred on different hubs. The merger leads to a rationalisation and a single-hub operation:



The merger will also permit cost-efficiencies in serving markets, which previously involved originating in one network and terminating in the other, in the form of the cost-side economies of scope discussed earlier. In particular, the merger will permit more “seamless” operation.⁶⁵

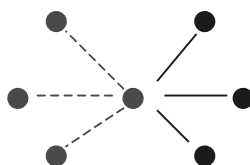
The anti-competitive effects of a merger, on the other hand, depend upon the extent of overlap of the networks, or more precisely, the number of markets that the networks were both serving (or may have

both served). In addition, a merger will have the effect of enhancing the demand for the network. This can increase the market power of the network, especially at its hub airports and especially when the merger increases the range of services available from a hub.

The most straightforward cases to consider are those where the two networks do not overlap in the markets they serve (except, perhaps, on the hub-hub route between the networks) and the two networks are not potential entrants into each other markets. This situation arises in international airline alliances, where international regulatory restrictions prevent the two networks from competing. In these cases the alliances can yield efficiency gains in the form of enhanced seamlessness of operation. These gains must be considered alongside the anti-competitive effect of a reduction in competition on the hub-hub route(s) and the anti-competitive effect of an enhancement of the demand for the network as a whole.

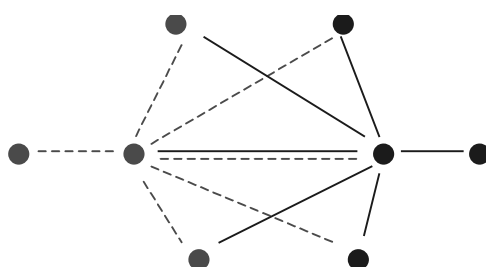


Slightly more difficult are cases in which the two networks do not overlap but share a common hub. In these cases, the merger can yield significant efficiency gains. These gains need to be considered along with the anti-competitive effect of the increased market power of the merged airline at its hub.



A study by Kim and Singal of all airline mergers in the US between 1985 and 1989 found that on non-overlapping routes which share a common hub, the efficiency effect dominates: a merger of two solvent firms serving those routes leads to a decline in prices of 11 percent on such routes⁶⁶. Borenstein finds that, in the case of the October 1986 merger of Northwest and Republic, prices in and out of the hub they shared (Minneapolis) rose by 11 percent faster than the national average from the year before the merger to the year after. The largest price increases occurred on routes where the two merging airlines had been the only competitors, increasing 23 percent faster than the national average.

More difficult still are those cases in which the two networks overlap. In this case the efficiency benefits of the merger can be significant due to the rationalisation of the hub-spoke system. However, the merger can also reduce competition in many markets. These mergers present the greatest problems for competition authorities. The Kim and Singal study found that in the 1985-1989 period, on average the market power effect dominated. Prices rose by an average of almost four percent on overlapping routes.⁶⁷ Interestingly, the Kim and Singal study also found that prices rose on non-overlapping routes, due, perhaps to a reduction in potential competition, or an increase in multi-market contact as discussed earlier.



Case Study I: A Code-Sharing Agreement Between Alitalia and Meridiana

The Italian Antitrust Authority has prohibited a code-sharing agreement between Alitalia and Meridiana, one of the few effective competitors of Alitalia on domestic routes. The agreement did not go as far as leading to a full-fledged alliance between the two airlines, since their frequent flyer programs were going to remain independent and many routes continued to be run independently. The agreement focused on four routes. On only one route (Rome-Milan) were both airlines offering competing non-stop service. On the Catania-Torino route, Meridiana offered a direct service while Alitalia operated a service with one stop in Naples. On the two other routes (Bologna-Palermo, Pisa-Catania) only one of the two companies was present. Nevertheless, the Authority argued that Meridiana was the only effective competitor of Alitalia on domestic markets and that the agreement could have led to a substantial reduction of competition. On all the routes involved, demand was sufficient to sustain service by both companies and the benefits consumers would receive from the alliance could not be proved.⁶⁸

Case Study II: American Airlines/TACA Group Code-Share Application

In January 1998 the US DoJ filed comments with the US Department of Transportation regarding the proposal by the American Airlines and the TACA Group (a group of Central American airlines) to offer code-share services. The DoJ argued that the Department of Transportation should give little weight in its public interest analysis to the parties' claims of the efficiencies of expanded networks and seamless service in the US - Central America market. The proposed American/TACA code sharing arrangement involves substantially overlapping networks. American and a TACA carrier operate overlapping non-stop flights on virtually all routes between Miami (the principal Latin American hub in the US) and the Central American gateway cities, including flights between Miami and Belize City (Belize), Guatemala City (Guatemala), Managua (Nicaragua), Panama City (Panama), San Jose (Costa Rica), San Salvador (El Salvador), Tegucigalpa and San Pedro (Honduras). Furthermore, in the overlapping non-stop Miami-Central American city pairs, American and TACA have a combined market share ranging from a low of 88 percent to a high of 100 percent. While DoT has attempted to minimise the threat to competition on the overlapping routes by imposing several conditions to its approval, the Antitrust Division explained that DoT cannot eliminate the risks to competition and that this agreement does not offer any significant pro-competitive efficiencies.⁶⁹

4. Competition in vertically related markets

It was noted earlier that the provision of air services requires the inputs of a host of other complementary airport services, including take-off and landing slots, air-traffic-control services, gates, passenger handling facilities, baggage handling facilities, refuelling, maintenance, cleaning and catering services and so on.

In some cases regulatory or security requirements or physical limitations on space limit the number of firms that can provide these services. A merger or alliance between two or more firms which

provide services in these markets can both reduce competition in these markets and can potentially distort competition in air transport services.

4.1 *Competition in airport services*

It appears that there are significant economies of scale in airport services. Only a few very large cities are served by more than one airport and even in those cases factors differentiating those airports often limit the degree of competition between them. Given this lack of competition, airports have significant potential to exercise market power. In addition, if an airline could integrate into the provision of airport services, it would be in a strong position to restrict or prevent the development of competing air services at that airport.

As a result, in most countries airports are government owned. In a few countries some airports are privately owned and regulated. As in other industries, government ownership and/or regulation of airport services has often led to inefficiencies in the pricing of airport services and in decisions over capacity expansion. This, in turn, has affected the level of competition in air services. Where existing capacity is used inefficiently, or when profitable opportunities to expand capacity are not exploited, new entrant airlines may not be able to obtain access to key facilities such as takeoff and landing slots, gates or other services. Borenstein notes:

“Many analysts have pointed to airport capacity shortages as the most critical factor affecting competition and efficiency in the domestic airline industry. ... From 1977 to 1990, domestic [US] air travel increased by 120 percent. During this time, no new airports were built, while expansion of existing airports was greatly hampered by environmental concerns and local zoning and noise restrictions. The formation of hubs also increased the strain on many airports. A hub operates by scheduling many incoming flights at virtually the same time and then many departures 30 to 60 minutes later, thereby increasing airport capacity demands for a given number of flights”.⁷⁰

The effect of constraints on slots and gates on the level of competition is discussed further in the appendix.

4.2 *Computer reservation systems*

All airlines make use of information technology systems for providing information about the carrier's schedules, availability, fares and fare rules, for making reservations and issuing tickets. These systems are known as “computer reservations systems” or CRSs.

There appear to be economies of scale in the provision of computer reservation services. The costs of the necessary computing hardware, software and telecommunications facilities are largely fixed and independent of the number of reservations made or tickets issued. In addition, if the provider of the computer reservation system can raise the cost to airlines of being connected to more than one computer reservation system, the provider may be able to induce demand-side economies of scope since, in the presence of switching costs, computer reservation systems which provide access to a larger number of flights will be more valuable to travel agents.

These arguments suggest that the market for computer reservation systems (at least in the past) may not be able to sustain effective competition. Borenstein notes:

“The earliest entrants in the computer reservation service industry, American’s Sabre and United’s Apollo systems, signed up many travel agents before competing CRSs became widely available. Later entrants have never attained significant penetration in more than a few locations, areas in which the airline owning the CRS has a large share of the flights and traffic. In recent years, Sabre and Apollo have been accused of attempting to lock travel agents into exclusive use of their systems through various contract requirements: damages charged to agents who choose to switch systems may have been out of proportion to actual costs; access to an airline’s TACO program may have been illegally tied to use of its CRS; and minimum use clauses may be the reason that nearly all travel agents use only one airline’s CRS for all bookings. These complaints continue, but so far have not been confirmed in court.”⁷¹

As with other vertically related services, there is a concern that the airline owning the CRS may use its dominant position over the CRS to restrict or prevent competition in the airline industry. Initial concerns focused on the practice that an airline owning the CRS would display its own flights more prominently than those of its competitors. A 1984 decision of the Civil Aeronautics Board outlawed such “screen bias”. In 1991 a code of conduct was established by the ICAO governing standards of information display and access on CRSs.

The owner of the CRS can also restrict competition by charging a high fee for “access” to the essential facility, in the form of high charges for each ticket issued through the CRS. “Under the CAB rules, a CRS must charge the same booking fees to all airlines, but such a non-discrimination rule cannot affect the price or cost paid by the airline-owner for booking its own tickets”⁷².

These problems can be partially overcome through joint or “club” ownership of the essential facility. In practice, virtually all-existing CRSs are jointly owned by several airlines. However, the problem of discrimination with respect to airlines, which are not members of the club, remains. “In Europe, although fees are payable on a non-discriminatory basis by all airlines participating in a CRS, many carriers, because of their partial ownership of systems such as Amadeus, recoup much of their expenditure in the form of profits. The US Department of Transportation found that booking fees per segment were about twice the cost of providing the service. As a result of non-ownership, smaller carriers seemed to be disadvantaged by an estimated 1 per cent of overall costs.”⁷³

Ownership of a CRS can also facilitate other practices, such as the loyalty programs discussed earlier. “Computer reservation systems have also become a critical tool in the administration of travel agent commission overrides. Although the 1984 rule explicitly forbids tying of TACOs to use of a carrier’s CRS, such practices almost certainly continue. Ownership of the CRS used by an agent makes it easier for an airline to implement a TACO program, because most programs are based on the share of the agent’s bookings that go to an airline, requiring reliable information on all of the agents’ sales.”⁷⁴

4.3 *Effect of mergers and alliances*

As is well established, competition enforcers need to consider the effect of mergers and alliances on all markets in which the merged firms provide services. A merger or alliance between two firms, which collectively have a dominant position in these vertically related markets, could have an important impact on competition in air services. In particular, a merger or alliance between two airlines which collectively hold a dominant position in slots or gates, baggage-handling facilities, maintenance or in the ownership of a CRS could reduce competition in these markets and allow these firms to abuse this dominant position to constrain competition in the market for air services.

5. Promoting competition: Competition and regulation remedies

As in other industries, competition law controls in the airline industry are essential to ensure that competition is preserved and enhanced. However, competition authorities typically have significant discretion in imposing conditions on what would otherwise be anticompetitive mergers and alliances. Competition authorities also have discretion over the remedies that can be requested as a result of an infringement of competition law. The purpose of this section is, drawing on the previous analysis, to set out a list of potential remedies that can improve competitive conditions in the airline industry.

Many of these remedies can and are also applied through other public policy instruments such as regulation. Indeed, a striking feature of many of the competition remedies set out below is their similarity to conventional regulatory approaches. This raises the question of the appropriateness of regulatory-type constraints in the context of the implementation of competition policy.

Competition could be protected and enhanced in the airline industry through the following policies:

1. *Elimination of regulatory controls and/or international agreements which restrict or prevent new entry or the expansion of services by existing operators.*

Especially in international markets bilateral arrangements between many countries continue to restrict both the number and the identity of the airlines that can service a particular route. Many such agreements also restrict the number of flights the named airlines can provide and the airports they can service. Competition can be enhanced therefore through further bilateral and multilateral liberalisation.

EC Directives have almost completely liberalised intra-European air services. In principle any airline domiciled in an EU country can provide air services anywhere in the EU. However, the same is not true for extra-European air services. These are still negotiated on a bilateral basis and even if unrestrictive in the number of services that can be provided, almost always limit the ownership of the airlines that can service the bilateral routes. Competition could be further enhanced therefore by treating any airline domiciled in the EU as a domestic airline for the purpose of such bilateral arrangements.⁷⁵

A reform of this kind was proposed by the EC as a remedy for the BA/AA alliance and in the Lufthansa/SAS/United alliance. The EC proposal in each case would require the UK, Germany, Finland, Sweden and Norway to permit, as a condition of approval, “any Community carrier established in the EEA to operate direct and indirect services between any airport in its territory and the United States, setting its fares freely”.⁷⁶

2. *Controls on concentration and divestiture of certain services.*

Of course, controls of concentration are at the heart of competition law enforcement. As the earlier part of this paper noted, such controls on concentration are particularly important on routes where new entry is difficult, such as hub-hub routes. Hub-hub routes were the focus of competition concern in several recent decisions of US and EU competition authorities.⁷⁷

Correspondingly, it may, in certain circumstances be appropriate to require divestiture, especially where doing so creates two or more sustainable networks. This issue has arisen in Mexico where following the peso crisis of 1995, the government came into ownership of the two largest airlines Mexicana and AeroMexico, placing them under a single holding company

known as Cintra. The question has arisen as to the most efficient long-term structure of the industry. The Mexican competition authority has argued for divestiture of these companies prior to privatisation.

3. *Controls on loyalty programs to prohibit or limit the effectiveness of such programs in creating or sustaining market power.*

It was shown earlier that loyalty programs can enhance the benefits of dominance of a hub and can yield benefits from an increase in network size. Both of these effects can be anti-competitive. In the absence of loyalty programs the nature of competition would shift towards route-by-route competition and away from network-by-network competition.

Competition enforcement can prohibit or limit the effectiveness of loyalty programs. The European Commission, in particular, has taken action against travel agent incentive programmes. In a case involving British Airways, the Commission found that BA has offered travel agents extra commission payments in return for their meeting or exceeding their previous year's sales of BA tickets. "The commission maintained that this makes the travel agents loyal to BA, discourages them from selling travel agency services to other airlines, and creates an illegal barrier to airlines wishing to compete against BA in the UK markets for air transport"⁷⁸. The commission also identified a set of principles to establish guidance for other airlines in similar circumstances. The commission determined that:

"Loyalty rebate schemes are equivalent to a 'loyalty discount' - a discount based not on cost savings, but on loyalty of the type consistently condemned by the commission as an exclusionary abuse of a dominant position. ... [I]t is established community law that a dominant supplier cannot give incentives to its customers and distributors to be loyal to it, foreclosing the market from the dominant firm's competitors"⁷⁹.

If travel agent incentive schemes may be anti-competitive, logic suggests that frequent-flyer programmes may be also. It is likely that competition in the airline industry could be enhanced through a progressive phasing-out of frequent-flyer programmes. Short of outright prohibition of loyalty programmes, an alternative would be to require dominant airlines to allow rivals to participate in its loyalty schemes, eliminating any competitive advantage to the dominant incumbent.

Controls on loyalty schemes were proposed by the EC in the BA/AA and Lufthansa/SAS/United cases. In those cases the EC proposed putting two options to the merging airlines. This first would require that the FFPs of each airline be kept separate, essentially restricting the attractiveness of both schemes. The second would require that other rival airlines be allowed to join the scheme.⁸⁰

The EC also proposed in these cases that other forms of loyalty programs be explicitly prohibited. For example, in the AA/BA case the EC required that "the joint policy of BA and AA towards travel agents established or providing services in the United Kingdom should not include a system of remuneration that has the object or effect of securing the loyalty of travel agents to the members of the alliance on the relevant markets. The remuneration given by the alliance to travel agents should in particular exclude any remuneration based on a sales threshold system. The terms of fares offered to large customers established or buying transport services in the U.K. should be linked to annual turnover on the relevant markets, without a system of thresholds or a system which directly or indirectly rewards loyalty"⁸¹.

4. *Policies to enhance the capacity of airport services (including slots, gates, ground-handling and maintenance facilities) through removal of regulatory constraints on the expansion of airport services and enhancement of incentives on airports to expand capacity.*

New entry on a particular route will not be possible if airport facilities are not available at each end. A key element in enhancing competition therefore, especially at certain airports is taking steps to enhance the capacity available. This may include allowing airlines to construct new airports or to construct new facilities at existing airports. The recent study by the Transportation Research Board in the US on airline competition includes key recommendations directed at enhancing airport capacity and at more efficient use of existing capacity.⁸² It is conceivable that a merger or alliance could be made conditional on the expansion of airport services.

5. *Controls on the ability of an airline to acquire dominance in the market for slots, gates, ground-handling or maintenance and/or requirements to divest from a dominant position in the market for slots, gates, ground-handling or maintenance and/or constraints on the ability of the firms to use such a dominant position to restrict competition*

Where an expansion of existing capacity is not possible, it is clearly important to ensure that an existing airline does not acquire a dominant position in airport facilities. Or, if an airline does so, to consider policies of requiring divestiture or other policies which ensure that the facilities are available to rival airlines on non-discriminatory terms and conditions.

For example, in the BA/AA and Lufthansa/SAS/United cases, the EC proposed that the merging airlines be required to give up a large number of slots to competitors wishing to provide US-London services, who could not obtain slots through the normal slot allocation mechanisms. In both instances, the EC proposed that, as a one-off mandatory divestiture, the merging airlines be required to give up slots and facilities (at both ends) on demand by competitors until competitors provided at least 55 percent of the total number of services on the hub-hub route in question.

In Japan, there are currently no independent service facilities, giving the incumbent airlines (Japan Airlines and All Nippon Airways) a dominant position in the market for maintenance services. According to newspaper reports, in response to increasing competition from two new entrant airlines, Skymark Airlines and Air Do, ANA and JAL are threatening to raise maintenance charges and to refuse service for additional planes that Skymark and Air Do plan to introduce next year.⁸³

6. *Controls on the ability of an airline to acquire a dominant position in CRSs, or to use its ownership or influence over a CRS to restrict competition or to divest ownership in a CRS.*

As mentioned earlier, a 1984 decision of the CAB in the US and a 1991 code of conduct of the ICAO prevents airlines owning CRSs from displaying their own flights more prominently. In principle, merger approval might be conditional upon allowing other airlines access to the ownership of the CRS.

7. *Controls on the ability of an airline to expand its output in response to competition and controls on the ability of a dominant firm to restrict output to raise price.*

Concerns about price and levels of output arise both when prices are “too low” (and therefore may be predatory) and “too high” (and may involve the exercise of market power). Concerns

about predatory pricing are of course addressed through competition law enforcement, but are occasionally bolstered by regulatory policies such as a floor on price, a limit on expanding output in response to new entry or restrictions on raising price after the exit of a competitor.

For example, in its consideration of Lufthansa/SAS alliance, the EC approved the alliance subject to the requirement that the airlines “must freeze the number of daily frequencies they operate on a route when a new entrant decides to serve that route. This condition is designed to prevent the airlines already present from increasing substantially their number of frequencies with a view to squeezing the new entrant from the market. Lufthansa and SAS must nevertheless be allowed to exercise the necessary degree of flexibility in operating their services: in the event of a new competitor starting up on a route, they should be able to increase the number of daily frequencies by one frequency on the relevant route”.⁸⁴

Concerns about monopoly pricing are usually addressed through regulation but, again, are occasionally bolstered by competition remedies that impose a ceiling on price or a floor on the amount by which a dominant firm can reduce output.

For example, in considering an alliance between Qantas and British Airways, the Australian Competition and Consumer Commission imposed a price cap, requiring that the net revenue per passenger not increase in real terms over a three years period. In addition, the ACCC imposed a quantity floor of the capacity available for freight by requiring that “during the period 1 April 1995 to 31 March 2000, the average aggregate weekly available capacity for freight from Australia to the UK on eastern hemisphere flights will not be less than 100 tonnes”.⁸⁵

6. Conclusion

The form of competition that is emerging in the airline industry following deregulation and liberalisation is far from the competitive ideal of perfect competition. Despite relatively low barriers to the provision of new services, the advantages of economies of scope seem to be strong. There is a clear tendency towards single-airline dominance of hub airports and dominance of the incumbent airline on spoke routes. New entry, especially on spoke routes and hub-hub routes is very difficult.

There are strong incentives for consolidation. The demand and cost side economies of scale and scope give larger airline networks a competitive advantage over smaller carriers. At the international level, where regulatory restrictions prevent consolidation, this drive for consolidation is manifest in the growth of international alliances and the formation of four large international super-alliances.

Despite substantial progress in domestic liberalisation in many countries, many international air services remain governed by a myriad of bilateral agreements, which directly restrict the quantity, and quality of services offered. In addition, at many airports constraints on slots limit the entry of new services and the expansion of existing services.

In these conditions competition in the airline industry remains fragile. The drive for consolidation in the airline industry represents a potential threat to that competition. Although certain mergers and alliances can lead to substantial benefits to consumers, there is also a strong possibility of important restrictions on competition, especially on overlapping routes and, more particularly, on hub-hub routes. Careful consideration should be given to policies, which limit the effectiveness of loyalty programs. Consideration should also be given to conditioning mergers and alliances on the relaxation of wider regulatory policies which restrict entry or expansion or that limit airport capacities.

7. Appendix

7.1 *Constraints on slots*

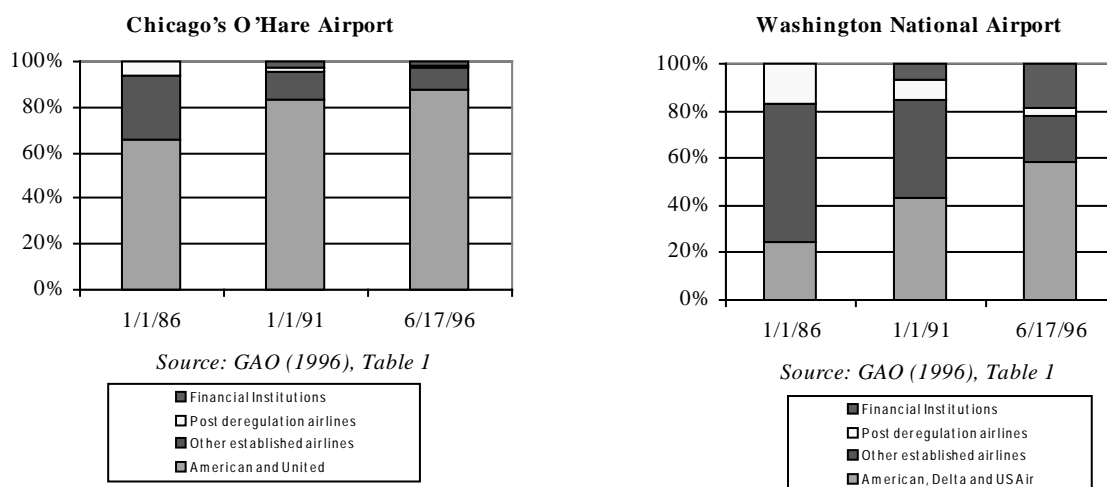
Particular attention has focused on takeoff and landing “slots” - the right to takeoff or land at a certain time on a certain day. Air traffic control and runway capacity considerations limit the maximum number of possible plane movements in an hour. Many airports have already reached this maximum, at least at certain times of the day or year. By the end of 1997 there were 132 slot-controlled international airports, 118 year round and 14 during the peak traffic summer season.⁸⁶ Public policy issues surrounding takeoff and landing slots have focused on how to allocate scarce slots efficiently and how to provide incentives for efficient expansion of airport capacity where that is possible.

There are two broad approaches to allocating scarce resources - approaches which focus on setting the price for the resource (and allowing market forces to determine the quantity sold) and approaches which focus on the quantity of the resource available (and allow market forces to determine the price). Where the quantity of the resource is fixed, as in the case of airport slots at a constrained airport, it will typically be more efficient to use an approach which fixes the total quantity available and uses a market mechanism (such as an auction or tender) to allocate the slots to carriers. Where rationing is carried out on the basis of prices, the efficient pricing structure involves a form of “peak load” pricing - charging higher takeoff and landing fees at peak times. At least in the US, such schemes have been rare.⁸⁷

Whatever approach is adopted, there is a strong potential for anti-competitive behaviour. Here, as throughout the economy, a dominant firm will be willing to pay more than a competitor for outstanding slots. In some countries this is prevented through competition law controls which prevent the acquisition or strengthening of a dominant or jointly dominant position in slots.

In the case of the US, since the introduction of slot trading at slot constrained airports the dominant incumbent airlines have succeeded in increasing their proportion of the total slots, despite measures explicitly designed to ensure that slots become available to new entrants. The following chart illustrates the evolution of slot allocation over time at Chicago’s O’Hare and Washington’s National airport.

Figure 5: Evolution of slot allocation at Chicago O’Hare and Washington National



A variety of policies have been proposed in the US, which attempt to prevent airlines from acquiring or strengthening a dominant position in slots. These proposals involve mechanisms under which slots could be reacquired from existing carriers and reallocated to new entrants. One example is the existing “use it or lose it” rules which require an airline to use a slot at least 80 percent of the time or face having the slot revoked by the FAA. Other proposals go further. For example, the Port Authority of New York and New Jersey has argued for “a modest withdrawal of air carrier slots, not to exceed three percent on an annual basis, for reallocation to new entrants and small incumbents by lottery”.⁸⁸

In 1994 the Italian Antitrust Authority found Alitalia guilty of abusing its dominant position by slot hoarding. The Authority found that Alitalia retained slots that would otherwise have been made available to other airlines by scheduling flights and then routinely cancelling them. Only a very small number of the flights were cancelled due to weather conditions or causes independent of the operational choices of the airline. In addition, in 1996 the Italian Antitrust Authority began an investigation into whether Alitalia, in performing its duties as slot clearance co-ordinator for all airports in Italy, was adopting strategies to conserve and consolidate its own position in the domestic market by obstructing the entry of new competitors. In the course of the investigation Alitalia gave up its role as clearance co-ordinator.⁸⁹

In systems where the total number of slots available is controlled, the level at which the total number of slots is fixed is important for competition. Incumbent dominant airlines have a strong incentive in limiting the total number of slots. In many cases, especially in the past, incumbent dominant airlines had a major role in decisions on both the number of slots and their allocation. In such circumstances there is a strong danger that this role will be exercised in a manner which restricts competition.

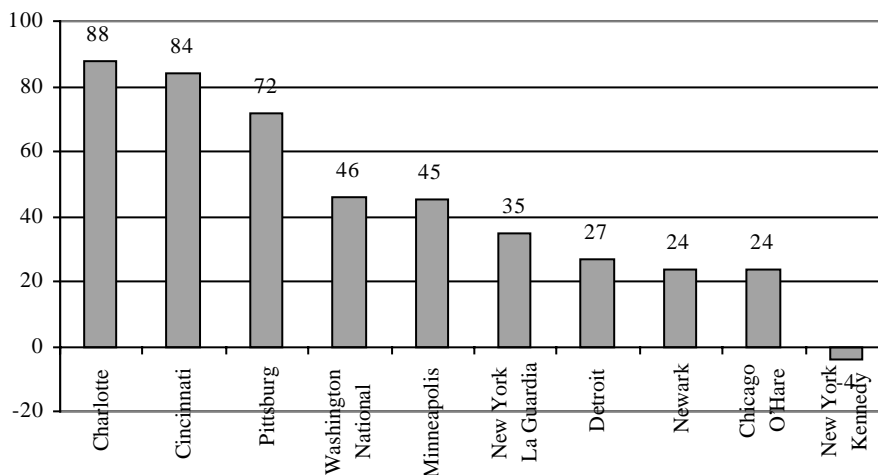
7.2 Constraints on gates

Constraints on gate capacity are even more common than constraints on takeoff and landing slots. A survey by the US GAO in 1990 found that of the 66 largest US airports, 85 percent of their gates were leased to establish airlines under long-term exclusive-use leases. They identified six US airports where access to gate capacity is a significant barrier to entry:

Airport	Proportion of gates under exclusive-use leases
Charlotte	90%
Cincinnati	100%
Detroit	88%
Minneapolis	100%
Newark	84%
Pittsburgh	88%

There is some economic evidence that capacity constraint on slots and gates translate directly into market power. Of the 43 airports which are classified by the FAA as “large hubs”, the fares are generally much higher at the ten airports which suffer from capacity constraints. On average, the fares from these airports, adjusted for flight distances, were 31 percent higher relative to the 33 other airports.

Figure 6: Percentage that average fare was higher than at other 33 airports



Source: GAO (1996), Figure 2

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NOTES

1. Economist, "Airline alliances. Mergers in mind", 26 September 1998. The most thorough such alliances cover all aspects of the airline business including codesharing, network scheduling, revenue allocation, promotion and marketing, relationships with travel agents, ground handling, loyalty programs, joint procurement, joint ventures, engineering and air freight co-ordination. These alliances are often virtually indistinguishable from full-fledged mergers. The resulting companies act like a single co-ordinated entity.
2. Videoconferencing, in particular, has been highlighted as a substitute for physical business travel. The Economist notes that: [An IATA survey of business travellers] "found that although 94 percent of business travellers reckoned air travel was indispensable to their jobs, half of them thought that developments in telecommunications would replace some of it. ... Unnecessary travel wastes lots of people's time. Some companies may find that just one member of a team really needs to travel while the rest can stay behind and take their meetings in a video-conferencing room. Saturn, a new car-making subsidiary of General Motors, does just that. It reckons it has saved \$500,000 a year in air fares by installing a video-conferencing link between its factory in Spring Hill, Tennessee, and its Detroit office." Economist (1993), p. 8.
3. "The development of high-speed trains running at 300 kph or more can provide a speedier alternative to making short journeys by air. France's TGV rail network has already robbed air lines of customers. ... The opening of the rail link through the Channel tunnel will deflect lots of air-passengers from the London-Paris hop, one of the busiest air routes in the world" Economist (1993), page 8. It remains an open question, however, if the TGV would be a viable substitute in the absence of substantial state subsidies.
4. A traveller who lives between two cities may be indifferent between the airports serving each. On the other hand, one city can be served by several airports, which may not be perfect substitutes from the perspective of travellers.
5. The US DoJ notes that "In addition to distinguishing between passengers based on their demand for non-stop and connecting service, market definition on US-London routes also depends upon which London airport passengers prefer – time sensitive business travellers overwhelmingly prefer Heathrow to Gatwick. USDoJ (1998).
6. "Evidence shows that for an identifiable group of time-sensitive business passengers, one-stop service is not a reasonable substitute for non-stop service; they would not switch to one-stop service in response to a price increase in non-stop service. Airlines can and do charge these travellers different prices than leisure travellers, targeting time-sensitive passengers with fare restrictions and conditions". USDoJ (1998).
7. "The existence of a separate market for non-stop service is supported by recent econometrics work that shows that time-sensitive business-type customers have a strong preference for non-stop versus one-stop travel". See Berry, Carnall and Spiller (1996).
8. Economist (1999), page 68.
9. For a discussion of the regulatory regime governing air cargo transportation, see OECD (1999a). The US was the first major country to liberalise its domestic airline industry, beginning in 1978. Prior to that date almost all airline operations were subject to regulation. "The Airline Deregulation Act ("ADA")... of 1978 incrementally phased out ... entry and price restrictions over the next three to five years. Until 1981, the Civil Aeronautics Board still controlled entry of firms into routes, but the ADA shifted the burden of proof to incumbent airlines to demonstrate that entry by competitors was not in the public interest. During the same time period, existing firms could enter one route per year without CAB approval, and each firm could protect one route from entry. After 1 January 1982, aside from the usual standards for certification, there were no restrictions placed on a firm's entry into routes. During the first four years after deregulation, the ADA permitted airlines limited flexibility in setting prices: fares could be increased five percent above, or decreased 50 percent below the Standard Industry Fare Level without the CAB's approval. The CAB's

authority over pricing ended on 1 January 1983 and the CAB itself was eliminated on 1 January 1985". Evans and Kessides (1992).

10. ICAO (1998)
11. See GAO (1998), p. 4.
12. See Van Miert (1998).
13. This is known as the "sixth freedom" - the ability to take passengers from a second country through a stop in the home country, to a third country.
14. The ability to service such a route is known as the "fifth freedom" - the ability to take passengers from a second country to a third country on a route which originates in the home country.
15. Economist (1999), page 68.
16. LANChile says it wishes to continue its existing codesharing agreements with Aeromexico and Varig, despite the fact that Varig is member of a competing alliance.
17. Economist (1999), page 67.
18. "Star has no fewer than 24 committees to sort out such matters as 'network connectivity', purchasing and customer relations. Chairmanships have been spread around to keep everyone happy. For those involved it makes even Airbus Industry seem a model of industrial efficiency". Economist, "Airline alliances. Mergers in mind", 26 September 1998.
19. Economist, "Flying in formation: airline alliances", 22 July 1995.
20. Financial Times, "Treaty wings to success", 9 September 1999
21. Transportation Research Board (1999), page E-3.
22. Economist, "One world, few airlines", 26 September 1998.
23. Where the firms can choose the degree of differentiation of their products, these effects can be strengthened as the firms can choose to differentiate their products sufficiently finely that the demand in each product market is sufficiently limited so as to support only one firm.
24. Caves (1992) and Eads, Nerlove and Raduchel (1969), but see Liu and Lynk (1999).
25. Borenstein (1992), p49-50.
26. Another cost of the hub-and-spoke system is its tendency to lead to wide variability in airport utilisation (many flights are scheduled to arrive and take-off at the same time), leading to higher average excess capacity at airports.
27. There are two other sources of economies of scope, which should be mentioned. The first is that there are clearly economies of scale associated with serving both directions of a given route, as otherwise a plane would have to return empty. Similarly, since planes cannot be leased for very short period of time, the ability to maintain a plane's rate of utilisation is an important aspect of airline efficiency. Therefore, at least for very small airlines, there are economies of scale and scope in operating over those routes, which ensure the plane is utilised continuously throughout the day.

28. Borenstein (1992), p57.
29. Liu and Lynk (1999), page 1090. As one would expect from this theory, following the deregulation in the US and the EU, many airlines entered into alliances with other feeder and commuter airlines. These alliances were later replaced with integration between the companies. "In the early part of deregulation, many commuters agreed to operate in co-ordination with, and under the name of, a major jet airline. These 'codesharing' agreements meant that the commuter airline's flights would be timed to connect with the major airline and would be listed on computer reservation systems under the airline code of the major. In the later 1980s, these agreements were often replaced by vertical integration". Borenstein (1992), p59.
30. In many industries there are costs associated with deriving services simultaneously from 2 or more firms. For example, the cost of maintaining a fixed wire connection to two or more independent telecommunications networks is sufficiently high that most individuals will only wish to maintain one such connection. Since a network is more valuable the more people than can be reached, consumers are willing to pay more to be connected to larger networks. Similarly, given the human capital investment required in understanding an operating system, most personal computer users wish to only learn one such system. Since the range of software available is larger for more popular operating systems, consumers are willing to pay more to learn the more popular systems.
31. Borenstein (1992), p62.
32. The USDoJ notes that "it is well recognised that an airline's frequent flyer program becomes more attractive as its presence at a city increases". See Borenstein (1992), p62 and Levine (1987), p454.
33. Levine (1987).
34. GAO (1990b)
35. Borenstein (1992), p62.
36. Levine (1987), Borenstein (1991).
37. Borenstein (1992), p62. As an illustration of the effect of such incentive schemes, consider the following example. Suppose that the incumbent airline normally sells 5000 tickets at \$100 each through a particular agency. Let's assume an incumbent airline uses an incentive scheme under which it offers the agency a commission of 12 percent on all tickets if the agency sells 5000 or more tickets, and ten percent otherwise. In this case the travel agent's commission will be 5000 times \$100 times 12 percent or \$60.000. Suppose that an entrant enters the city market, expecting to attract ten percent of the total business. In this case the travel agency, if it promotes the competitor airline, will expect to sell 4500 tickets on the incumbent and 500 on the competitor. Its commission from the incumbent is now 4500 times \$100 times ten percent, which is \$45.000. This leaves a shortfall of \$15.000 in commission revenue, to be made up by the competitor. The competitor must offer the travel agency a commission of 30 percent if it is to induce the travel agency to promote its tickets (500 times \$100 times 30 percent is \$15.000).
38. GAO (1996), page 17.
39. GAO (1996), page 16.
40. "Concerned about the potential anti-competitive effects of overrides, the [US] Justice Department opened an investigation in 1994 to determine if their use constitutes an antitrust violation - either the monopolisation of a relevant market or agreements in unreasonable restraint of trade. As part of its investigation, the Justice Department collected industry-wide data on airline bookings and override payments. However, the Department's analysis of the data was unable to show that dominant carriers had been able to use overrides to create a disadvantage for smaller carriers or to prevent entry into domestic

- airline markets. The Justice Department therefore closed its antitrust investigation in October 1996". GAO (1996), p. 15.
41. USDoJ (1998), page 11.
 42. USDoJ (1998), page 12.
 43. Evans and Kessides (1992), page 463.
 44. Borenstein (1989), GAO (1990a), DOT (1990), Berry (1990b), Abramowitz and Brown (1990), Evans and Kessides (1992).
 45. Borenstein (1992), page 55. "One of the leading explanations for this result is the market power and customer loyalty advantage that a locally dominant airline can achieve through the use of frequent flyer plans and travel agent commission override programs (TACOs). One piece of evidence for this theory is that the dominant carrier at a concentrated airport charges higher average prices on routes to and from the airport than other airlines serving the same routes. ... Controlling for price and service quality, the dominant airline at an airport attracts a disproportionate share of passengers who originate their trips at the airport, with the advantage being especially great on business-oriented routes. ... one would expect that frequent flyer programs give a dominant airline a greater advantage in attracting business travellers than others." Borenstein (1992), page 55-56.
 46. Evans and Kessides (1992), page 463.
 47. Borenstein (1992), page 54-55.
 48. *USA v Northwest Airlines and Continental Airlines*, Civil Action No. 98-74611
 49. "For example, a tourist starting his or her journey in Germany can fly via Frankfurt, Amsterdam, Paris, Brussels or London. Figures provided by companies demonstrate indeed that a significant number of German passengers effectively choose to fly via a hub located in another Member State. This means that for 'non time sensitive' passengers there are competition between networks". Van Miert (1998).
 50. See Morrison and Winston (1987), Borenstein (1989), Brueckner, Dyer and Spiller (1990).
 51. See Stiglitz (1987).
 52. Borenstein (1992), page 53.
 53. "The claims of predation that [the US DoJ] finds most credible involve not only price cuts, but also significant capacity expansion by incumbents. Our starting presumption is that the incumbent's pre-entry schedules are optimal for efficiently operating its network. If the existing network is optimal, the added cost of carrying an additional passenger can be quite small. Thus, in the absence of additional reasons to be suspicious, we are unlikely to pursue a predation complaint where the incumbent has made few or no changes to its network operations post entry, even if it cut fares significantly". Fones (1997).
 54. On the other hand, the entrant may be able to survive if it is significantly lower cost, or can differentiate its service in some way perhaps by operating to and from a neighbouring airport.
 55. See Hendricks, Piccione and Tan (1997)
 56. Starkie (1999), p282.
 57. See Transportation Research Board (1999), page E-6 and the survey in Starkie (1999).

58. See Starkie (1999).
59. Another facilitating factor is the relatively high degree of product homogeneity.
60. Borenstein (1992), page 65.
61. See Nomani (1990).
62. Borenstein (1992), page 65.
63. See for example Bernheim and Whinston (1990). See also the OECD discussion on tacit collusion OECD (1999b).
64. Kim and Singal (1993), page 565-566.
65. Including the elimination of any double marginalisation where it exists.
66. See Kim and Singal (1993). A merger with a failing firm, however, raises the same prices by 40 percent on average.
67. And by 40 percent in the case of a merger with a failing firm.
68. See Heimler (1999).
69. See *Annual Report on Competition Policy Developments in the United States*, DAF/CLP(99)14/7, paragraph 109.
70. Borenstein (1992), page 51.
71. Borenstein (1992), page 63-64.
72. Borenstein (1992), page 65.
73. OECD (1997), page 65-66.
74. Borenstein (1992), page 64.
75. The former EC Competition Commissioner, Karel Van Miert, has argued that the current system of bilateral open skies agreements in Europe are contrary to the basic principle of the single market and should be replaced by an EU-US open skies agreement.
76. EC (1998a), paragraph 29. EC (1998b), paragraph 25.
77. EC (1998a)
78. Antitrust and Trade Regulation Report, Vol. 77, No. 1919, page 120.
79. Antitrust and Trade Regulation Report, Vol. 77, No. 1919, page 120.
80. See EC (1998), paragraph 19.
81. EC (1998), paragraph 21.
82. Transportation Research Board (1999), p. E-8.

83. “Big Japanese Airlines Take on Newcomers: Incumbents Slash Fares At Expense of Profits”, Wall Street Journal Europe, 3 June 1999, page 5.
84. EC (1996), paragraph 92.
85. See ACCC (1995), p. 85.
86. ICAO (1998).
87. “One approach to allocating scarce airport capacity would be to impose congestion-based landing fees, which would increase at times of peak demand. ... To date, political resistance to peak-load pricing of runway use, particularly from general aviation operators, has successfully prevented its implementation, but recent moves by the FAA indicate that this may soon change. Congestion-based landing fees would also imply that fees would cease to be a linear function of weight, as is common now, raising the cost to smaller commercial planes and general aviation and lowering the cost to large planes. ... An attempt to implement such a plan in Massachusetts in 1987 was successfully challenged in the courts for being ‘discriminatory’” Borenstein (1992), page 51.
88. GAO (1996), page 7.
89. See Heimler (1999).

NOTE DE RÉFÉRENCE

par le Secrétariat

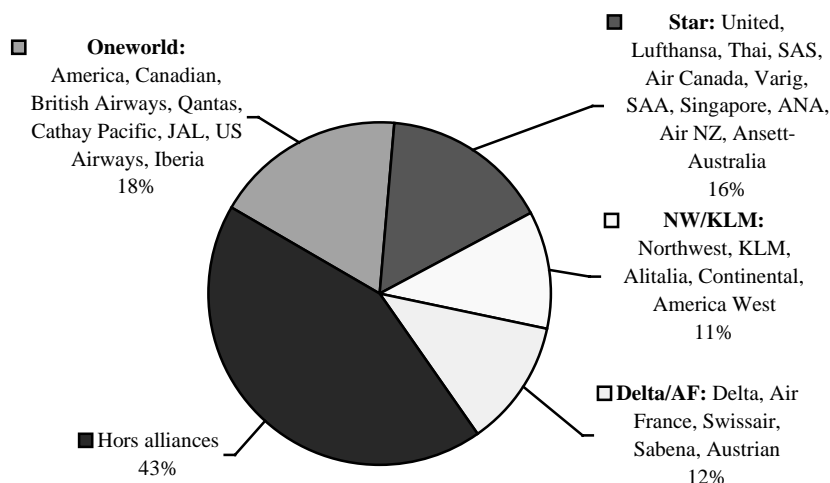
1. Introduction

Les accords et les alliances entre transporteurs aériens de différents pays ne constituent pas un phénomène nouveau, loin de là, mais ils se multiplient à un rythme soutenu depuis quelques années et, surtout, gagnent en étendue et en substance. D'où la nécessité de s'interroger sur leurs répercussions sur la concurrence internationale entre prestataires de services aériens.

Entre 1994 et 1998, le nombre d'alliances internationales a quasiment doublé : on en recensait 500 en 1998, contre 280 en 1994. De plus en plus souvent, elles vont au-delà des simples partage de codes ou accord de commercialisation et dans certains cas, se traduisent par une fusion *de facto*, en dépit des réglementations nationales qui interdisent les prises de participation étrangères¹.

Depuis cinq ans, les alliances internationales s'organisent essentiellement autour de quatre grands pôles qui assurent les deux tiers de la totalité du trafic, comme l'illustre le graphique ci-dessous.

Figure 1. : Alliances internationales entre compagnies aériennes



En pourcentage du trafic mondial, 1998

Source : *The Economist*, "Flying in circles", 17 juillet 1999.

Le développement de ces alliances internationales pose de gros problèmes en matière de concurrence. Si elles améliorent dans de nombreux cas la rentabilité des entreprises et la qualité des prestations - donc stimulent la concurrence -, elles nuisent considérablement à celle-ci sur certains marchés.

Ce rapport a pour objet d'étudier le fonctionnement de la concurrence dans le secteur du transport aérien et met en particulier l'accent sur les alliances et les fusions : quels sont ses mécanismes ? Certaines caractéristiques du secteur encouragent-elles les pratiques anti-concurrentielles ? Faut-il redouter les abus de position dominante ? Dans quelle mesure les fusions et alliances aggravent-elles la situation ? Enfin, quelles sont les mesures, notamment réglementaires, qui pourraient renforcer la concurrence en présence de grandes fusions et alliances ?

Le document est divisé en quatre parties. La première présente succinctement le secteur du transport aérien (les services qu'il fournit, son organisation et la réglementation à laquelle il est soumis). La deuxième décrit le type de coûts et les caractéristiques de la demande qui lui sont inhérents, et leurs répercussions sur la concurrence entre compagnies à long terme. La troisième porte sur la nature des coûts et de la demande dans les activités d'amont et d'aval (services aéroportuaires et systèmes informatisés de réservation). La quatrième, enfin, s'arrête sur les actions qu'il conviendrait d'entreprendre pour renforcer la concurrence dans le secteur.

Les points clés abordés dans cette étude sont les suivants :

- dans le domaine du transport aérien, un marché correspond en général à une liaison entre deux villes. Le secteur dans son ensemble assure ainsi un très grand nombre de services distincts sur plusieurs milliers de paires de villes. L'intensité de la concurrence (entre services de transport aérien et avec les autres modes de transport) varie beaucoup en fonction de la paire de villes et du type d'usagers. En général, les passagers sensibles au facteur temps (voyages d'affaires) sont moins disposés à changer d'horaire ou d'itinéraire que les autres (voyages d'agrément). Les problèmes de concurrence concernent au premier chef la catégorie des usagers pressés demandeurs de vols sans escale ;
- dans plusieurs pays de l'OCDE, la déréglementation a supprimé les obstacles à l'entrée et à la sortie, ainsi que le contrôle des prix et des services. Toutefois, à l'échelon international, le transport aérien est réglementé par un faisceau d'accords bilatéraux dont certains limitent considérablement les possibilités d'entrée et le niveau des services assurés. Quelques pays ont négocié des accords de ciel ouvert qui n'imposent pas de restrictions de ce type. Toutefois, en général, ils n'ouvrent pas le ciel des pays signataires aux compagnies des pays tiers et n'autorisent pas le cabotage. Il est donc possible de libéraliser davantage encore les services aériens internationaux. En outre, même dans les pays qui ne mettent pas d'obstacles à l'entrée, la saturation des aéroports empêche souvent de nouvelles compagnies de proposer des services supplémentaires;
- les économies d'échelle et de gamme, dans le secteur aérien, confèrent visiblement des caractéristiques singulières à la concurrence que se livrent les compagnies. En effet, les réseaux ont en général une structure en étoile. Or, l'organisation des services à partir d'un aéroport-pivot est propice à d'importantes économies de gamme. Pour en tirer pleinement parti, les compagnies axent leur stratégie sur la demande, par exemple en développant les programmes de fidélisation (au bénéfice des grands voyageurs et des agents de voyage). Les économies d'échelle et de gamme procurent des avantages aux grands réseaux au détriment des petits et sont à l'origine d'une nette tendance à la domination des aéroports-pivots ;

- la concurrence est souvent limitée et les prix sont en général plus élevés sur les services sans escale des réseaux en étoile (depuis et vers les aéroports-pivots). De nombreux réseaux n'assurent des vols vers les aéroports-pivots des compagnies rivales qu'à partir des leurs. La concurrence est plus vive (et les prix sont plus bas) lorsqu'il s'agit d'attirer les passagers peu sensibles au facteur temps qui effectuent des trajets plus longs et qui ont le choix entre plusieurs itinéraires avec escale(s). Dans la pratique, le risque de voir une nouvelle compagnie ouvrir une ligne sur une route donnée n'a que peu d'effet sur les prix ;
- les facteurs indispensables au fonctionnement d'un service (avions, créneaux horaires ou portes d'embarquement/débarquement) peuvent être loués et n'induisent donc pas de coûts irrécupérables. En revanche, il n'en va pas de même pour la création d'un nouveau service sur une route donnée, d'où des barrières à l'entrée. Celles-ci sont toutefois beaucoup plus importantes lorsqu'elles découlent de la stratégie commerciale. Ainsi, les compagnies déjà présentes réagissent avec vigueur à l'arrivée d'une nouvelle concurrente en réduisant leurs tarifs, en augmentant la fréquence de leurs vols et en améliorant la qualité de leurs prestations. Si leur dispositif de fidélisation est efficace, elles n'ont pas besoin d'aligner leurs prix pour conserver leurs parts de marché. Les compagnies qui sont en concurrence sur de nombreux marchés différents ont tout intérêt à réagir énergiquement à chaque nouvelle entrée pour dissuader les candidats potentiels ;
- les répercussions économiques des fusions et des alliances dépendent de la nature des réseaux qui s'associent. Une fusion entre deux réseaux qui ne se chevauchent pas favorise une amélioration de l'efficacité (car elle est propice à l'intégration des services), mais elle risque de limiter l'arrivée de nouveaux concurrents sur les marchés concernés. S'agissant des alliances internationales, les rapprochements entre réseaux non chevauchants vont moins à l'encontre de la concurrence dans la mesure où des obstacles réglementaires empêchent les compagnies aériennes d'accéder aux marchés étrangers. Une fusion ou une alliance entre deux réseaux qui se recoupent peut en revanche être beaucoup plus néfaste, notamment lorsque les deux compagnies concernées assurent en parallèle des services sans escale sur une même route (entre deux aéroports-pivots) ou sur un même tronçon (service avec escale et correspondances) ;
- de très nombreuses prestations sont nécessaires en amont et en aval pour assurer des services de transport aérien : gestion des créneaux de décollage et d'atterrissage, attribution des portes d'embarquement/débarquement, manutention des bagages, entretien, services informatisés de réservation, etc. Bon nombre de ces services annexes donnent lieu à des pratiques anti-concurrentielles pour diverses raisons. Ainsi, lorsqu'une compagnie aérienne est intégrée verticalement avec un prestataire en position dominante dans l'une de ces activités (une entreprise prépondérante dans la gestion des créneaux horaires, par exemple), elle peut en tirer parti pour freiner le développement de la concurrence. Les alliances et les fusions entre entreprises qui occupent conjointement une position dominante dans la fourniture des services en question (affectation des portes d'embarquement d'un aéroport donné, entre autres) peuvent dans certains cas se révéler particulièrement néfastes ;
- pour que la concurrence s'exprime de manière satisfaisante dans le secteur du transport aérien, notamment à long terme, il faut à la fois que la libéralisation soit réelle et que la réglementation antitrust soit efficace et appliquée judicieusement. Les mesures de libéralisation doivent viser à supprimer les barrières à l'entrée (à assurer qu'il n'existe pas d'obstacles à l'implantation ou au développement des aéroports et des compagnies aériennes nationales ou étrangères). Les politiques de concurrence doivent avoir pour objectif, comme dans les autres domaines d'activité, d'empêcher les entreprises d'exercer leur domination

grâce à des accords et à des fusions, ainsi que de limiter les possibilités de recours aux programmes de fidélisation pour tirer meilleur parti des avantages que procure la taille.

2. Le secteur du transport aérien

Nous commencerons par décrire succinctement le secteur du transport aérien (les services qu'il fournit, ses principaux concurrents et la réglementation à laquelle il est soumis).

2.1 Catégories de clients, services aériens et concurrents de l'avion

Comme dans d'autres domaines, il faut, pour comprendre les rouages de la concurrence dans le secteur aérien, commencer par mettre en évidence les différents services qu'il assure et les caractéristiques de la demande (catégories de clients et solutions de rechange offertes à chacune d'elles). De manière générale, les compagnies aériennes fournissent des services de transport aérien. Leurs prestations peuvent être classées dans deux catégories : passagers et fret. Nous nous concentrerons ici sur le transport de passagers.

Les transports aériens sont confrontés dans une certaine mesure (à la marge) à la concurrence d'autres modes de transport et moyens de communication. Les substituts sont fonction de l'objet du déplacement, de l'importance que le passager attache au facteur temps et de la distance à parcourir. Dans le cas des voyages d'affaires, par exemple, certains moyens de communication offrent une solution de rechange satisfaisante². En ce qui concerne les courtes distances (jusqu'à 1 000 kilomètres environ), d'autres modes de transport tels que les trains à grande vitesse (s'ils existent) rivalisent avec l'avion³. Dans le cas des longues distances, l'avion n'est pas véritablement menacé par la concurrence des autres modes de transport.

Dans un souci de simplicité, les marchés du secteur aérien sont en général définis en termes de paires de villes, car la plupart des trajets commencent et finissent dans une agglomération et la majorité d'entre elles sont desservies par un seul aéroport. Toutefois, cette définition est parfois réductrice⁴. Ainsi, Londres est desservi par plusieurs aéroports, Heathrow et Gatwick étant les plus importants, mais les voyageurs d'affaires semblent avoir une préférence pour le premier⁵. Dans ces cas, il est plus opportun de définir les marchés par "paires d'aéroports".

Les divers vols reliant deux villes données peuvent suivre des itinéraires et avoir des durées différents. Dans ce cas, l'éventail des possibilités jugées dignes d'être envisagées varie d'un voyageur à l'autre. Certains voyageurs d'agrément, par exemple, acceptent d'emprunter un autre vol la même semaine, le même mois ou la même saison. A l'extrême opposé, certains voyageurs d'affaires ne sont pas disposés à décaler leur départ, ne serait-ce que d'une heure. De même, tous les voyageurs ne sont pas enclins à envisager des itinéraires différents, notamment s'ils allongent le trajet ou supposent une ou plusieurs escales. Il ressort de certaines indications que les voyageurs d'affaires et d'autres voyageurs sensibles au facteur temps considèrent souvent qu'un service avec escale ne remplace pas avantageusement un service sans escale⁶. Dans ces cas, les vols avec escale et les vols sans escale correspondent à des marchés différents⁷.

Dans la mesure où les voyageurs soucieux de leur temps (ou voyageurs "d'affaires") ont beaucoup moins de solutions de rechange à leur disposition et où ils privilégient nettement certains aéroports (au départ et à l'arrivée), des horaires de départ définis et les vols sans escale (au détriment des vols avec escale(s)), ils sont concernés au premier chef par les pratiques anti-concurrentielles.

2.2 *Activités connexes, étapes de production*

Le transport de passagers par la voie des airs fait appel à de très nombreuses activités connexes qui relèvent aussi bien de l'aéronautique que des agences de voyage, en passant par les services informatisés de réservation et les services aéroportuaires. Ces derniers comprennent principalement la gestion des créneaux de décollage et d'atterrissage, le contrôle aérien, la mise à disposition des portes d'embarquement/débarquement, l'accueil des passagers, la manutention des bagages, l'approvisionnement en carburant, la maintenance, l'entretien, le ravitaillement, etc.

Ces facteurs d'appoint peuvent être assimilés à des activités d'amont et d'aval, autrement dit à des étapes de production. Le degré d'intégration entre les compagnies aériennes et les entreprises concernées varie sensiblement d'un cas à l'autre. A une extrémité du spectre, British Airways, par exemple, sous-traite autant de services que possible, de manière à se concentrer sur les vols et la commercialisation. A l'inverse, le groupe Lufthansa "comprend la plus grande société de maintenance du monde, la plus importante entreprise de ravitaillement (29 pour cent du marché), le numéro un du transport de fret aérien et une société de gros systèmes"⁸.

Comme nous le verrons plus loin, de gros problèmes de concurrence se posent parfois lorsque les compagnies aériennes et les entreprises d'amont et d'aval sont intégrées. En effet, si des barrières à l'entrée font obstacle à l'implantation de nouveaux prestataires sur le marché des activités connexes (en raison des contraintes réglementaires, par exemple), cette intégration verticale est propice aux pratiques anti-concurrentielles.

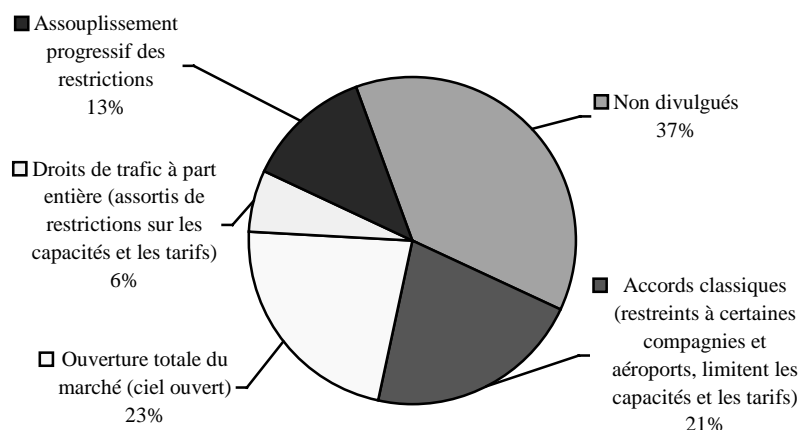
2.3 *Réglementation*

Jusque récemment, le secteur du transport aérien était très réglementé (il l'est toujours dans de nombreux pays). Cette réglementation concernait les prix, l'attribution des routes, la certification des nouvelles compagnies aériennes et le renouvellement des agréments accordés aux transporteurs existants. Dans plusieurs pays Membres de l'OCDE, la déréglementation a supprimé les contraintes auxquelles était soumis le secteur à l'échelon national⁹.

Certaines initiatives multilatérales se sont également traduites par une libéralisation non négligeable à l'échelon international (cf. les travaux de la Commission européenne en Europe et de l'ALENA en Amérique du Nord). Cependant, les services aériens internationaux sont souvent loin d'obéir à une concurrence parfaite. Dans bien des cas, les accords bilatéraux restreignent la concurrence sur plusieurs points, notamment le nombre de vols possibles, le nombre et l'identité des transporteurs et les aéroports pouvant être desservis.

Quatre-vingts accords bilatéraux ont été signés en 1997, dont 50 ont donné lieu à la divulgation d'informations détaillées (les autres demeurent secrets). Sur ces 50 accords, dix-sept étaient de type classique et désignaient la compagnie aérienne autorisée, indiquaient les aéroports pouvant être desservis et stipulaient les capacités, et soumettaient les tarifs à l'approbation de l'administration. Dix-huit autres accords de type classique prévoient l'ouverture totale du marché (les compagnies aériennes déterminent les aéroports desservis, les capacités et les prix entre les deux pays concernés) et cinq octroient des droits de trafic à part entière, moyennant certaines restrictions en matière de capacité et de tarifs. Dix contiennent une ou plusieurs dispositions relatives à la libéralisation progressive de l'accès au marché (désignation de plusieurs compagnies, augmentation graduelle des capacités ou suppression des restrictions sur le transport de fret, par exemple)¹⁰.

Figure 2. : Types d'accords bilatéraux sur les services de transport aérien



Source : OACI, 1998

Le marché des transports aériens intra-européens a été libéralisé, mais les services extra-européens (vols entre les États membres de l'UE et les pays tiers) continuent de donner lieu à des négociations bilatérales. Pour la plupart, ces accords imposent de sévères restrictions quant aux compagnies autorisées à emprunter les routes concernées et au nombre de vols possible. Cependant, dans le cas des États-Unis, ils se rapprochent progressivement des accords de ciel ouvert, dans lesquels les restrictions sont moindres. Des accords de ciel ouvert ont été négociés entre les États-Unis et les Pays-Bas, l'Allemagne et quelques autres pays européens. En revanche, l'accord bilatéral entre les États-Unis et le Royaume-Uni (le plus important du point de vue du nombre de passagers) limite la fréquence des services que les compagnies aériennes sont autorisées à assurer et interdit à toutes les compagnies américaines, American et United mises à part, de desservir Heathrow.¹¹

Les accords de ciel ouvert bilatéraux qui ont été signés comprennent des clauses qui limitent directement la concurrence entre les transporteurs de l'Union européenne¹². Ainsi, aux termes de l'accord en vigueur entre les États-Unis et les Pays-Bas, la compagnie KLM, par exemple, ne peut pas proposer un vol Francfort-Amsterdam-New York¹³ à un prix inférieur à celui que pratique Lufthansa/SAS/United sans l'aval des autorités compétentes. En outre, un accord de ciel ouvert conclu avec les États-Unis ne bénéficie qu'aux compagnies établies dans l'État membre de l'Union européenne concerné et dont le capital est contrôlé par des ressortissants de cet État. Si le Royaume-Uni et les États-Unis signaient un accord de ce type, Alitalia, par exemple, ne pourrait pas assurer des vols Rome-Londres-New York¹⁴. La Commission européenne estime que ces obstacles à la concurrence pourraient être levés si elle était autorisée à négocier directement des accords de ciel ouvert avec les États-Unis.

2.4 Alliances internationales

Depuis quelques années, des compagnies aériennes du monde entier forment des alliances. Celles-ci débouchent en général sur des accords de coopération aux formes diverses (partage de codes, capacité décommercialisée, mise en commun des programmes de fidélisation des passagers, des opérations de commercialisation, des services et des achats, et franchisage), dans l'objectif de renforcer ou d'accroître

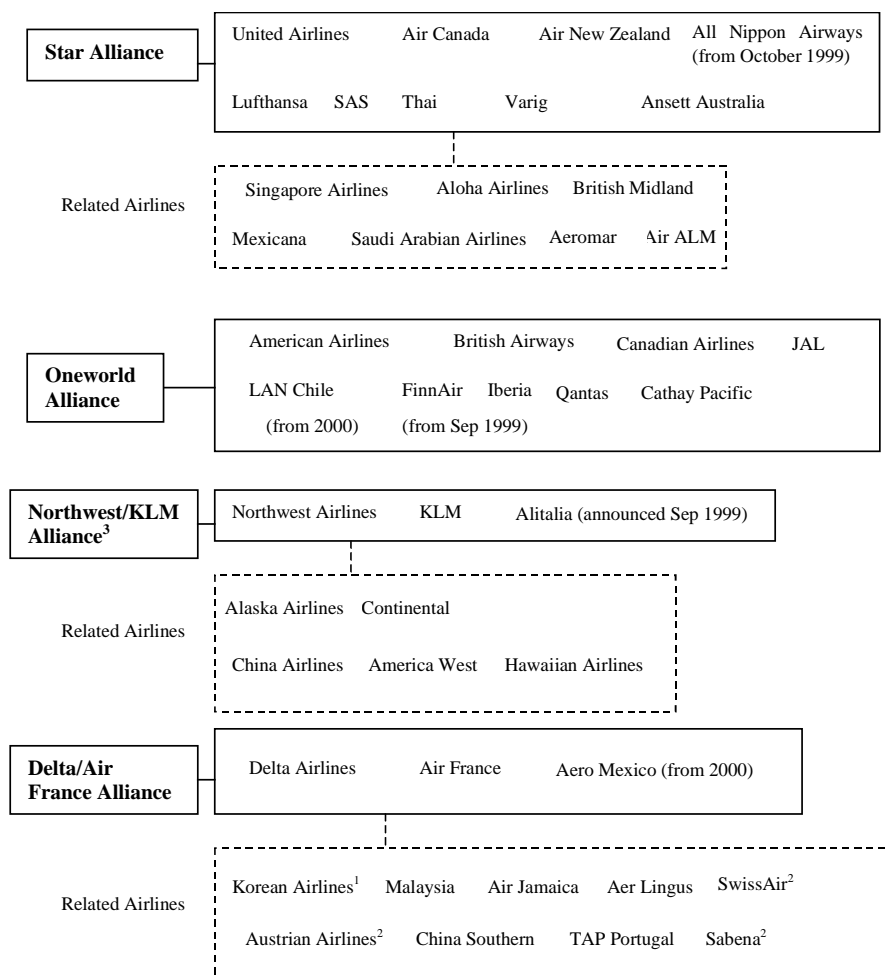
la présence des transporteurs concernés sur le marché et de redéfinir ou de consolider leur position dans un environnement de plus en plus concurrentiel. Soixante-dix pour cent des alliances prévoient le partage de codes, 50 pour cent la mise en commun des programmes de fidélisation des passagers et 15 pour cent le regroupement des services de ravitaillement, formation et maintenance, ainsi que l'achat groupé d'appareils¹⁵.

La principale évolution, ces deux dernières années, réside dans le rapprochement de grandes compagnies dans des alliances plus abouties et plus complexes qui englobent tous les aspects de l'activité. Les principales alliances internationales sont décrites dans la figure 3.

Ces regroupements sont dans une certaine mesure en évolution permanente. Ils diffèrent par le degré de coordination et de coopération qui les caractérise, et les compagnies aériennes qui les composent conservent en général des accords avec certaines de leurs concurrentes non membres, voire, dans certains cas, avec des compagnies participant à une alliance tierce. La figure 3 établit une distinction entre le "noyau dur" des alliances et les compagnies "associées", qui entretiennent des relations plus ou moins étroites avec les membres à part entière.

Le plus ancien et le plus évolué de ces rapprochements est l'alliance Star. Organisée autour de United et Lufthansa, elle a vu le jour en mai 1997. En septembre 1998, American et British Airways ont lancé Oneworld, à laquelle se sont ralliées FinnAir et Iberia en Europe, puis LANChile en Amérique du Sud¹⁶. La troisième alliance, Wings, s'articule autour d'une entreprise conjointe vieille de dix ans entre Northwest et KLM. En parallèle, la compagnie néerlandaise a conclu un important accord de partenariat avec Alitalia, et Northwest détient une partie du capital de Continental. Les accords entre ces quatre compagnies ne se sont pas toujours matérialisés sous la forme d'une alliance à part entière. Les bases d'une quatrième alliance ont été jetées en juin 1999 après l'annonce d'un rapprochement entre Delta et son partenaire de longue date, Air France. Il est intéressant de noter qu'au même moment, Sabena et Swissair, qui ont depuis longtemps des accords avec Delta et Air France et qui seraient donc susceptibles de rejoindre cette alliance, ont fait savoir qu'elles partageraient leurs codes avec la compagnie rivale American.

Figure 3. : Alliances internationales entre compagnies aériennes



Notes :

1. A la mi-1999, Air France et plusieurs autres compagnies aériennes internationales ont suspendu leurs accords de partage de codes avec KAL, invoquant ses mauvais résultats en matière de sécurité.
2. A la suite du rapprochement entre Air France et Delta, Swissair a vendu sa participation dans cette dernière compagnie (quatre pour cent) et a essayé de conclure un accord de partage de codes avec American Airlines. Ce rebondissement pourrait entraîner une reconfiguration du schéma présenté ci-dessus.
3. L'alliance Northwest/KLM devrait être baptisée "Wings", mais cela n'a pas encore été annoncé officiellement.

Source : sites Internet des compagnies aériennes et presse écrite.

Ces alliances se distinguent par leur portée et leur nature, mais elles ont globalement tendance à évoluer dans le sens d'un rapprochement de plus en plus étroit impliquant une coopération à tous les niveaux de l'activité (de la commercialisation aux achats). "En fait, ces super-alliances s'apparentent à de véritables fusions, dans toute la mesure qu'autorisent les réglementations byzantines du secteur aérien"¹⁷.

C'est dans les cas de l'alliance Star et de l'entreprise conjointe NW/KLM que le processus de "quasi-fusion" est le plus abouti¹⁸. Ce deuxième regroupement s'appuie sur la participation de 25 pour cent de KLM dans Northwest et se traduit par une véritable intégration des réseaux des deux compagnies.

"[KLM et Northwest] sont dispensées de respecter les lois américaines antitrust en vertu d'un accord aérien bilatéral entre les Pays-Bas et les États-Unis. Cela leur permet de fixer leurs tarifs ensemble, de créer et de promouvoir une image commune et de proposer les mêmes incitations

aux agences de voyage. Elles ont lancé une marque commune pour les voyageurs d'affaires et leur proposent des prestations identiques : mêmes types de sièges, de décor et d'assiettes à bord des avions. Grâce à l'harmonisation de leurs horaires, Northwest peut par exemple commercialiser des vols à destination de trente villes d'Europe et du Proche Orient, alors que les appareils qu'elle détient en propre n'en desservent que quatre. D'après les estimations du General Accounting Office et de Boston Consulting Group, KLM et Northwest ont ainsi vu passer leur part de marché globale des vols transatlantiques de 7 à 11 pour cent, drainant 350 000 passagers supplémentaires par an, d'où des produits d'exploitation conjugués et des économies de coûts qui se montent à 300 millions de dollars par an."¹⁹

Alitalia s'est récemment associée à l'alliance NW/KLM. En septembre 1999, le Financial Times écrivait :

“La coopération de KLM avec Alitalia ira encore plus loin que ses relations avec Northwest. (...) Il s'agira ni plus ni moins d'une fusion qui ne dit pas son nom. Les deux compagnies prévoient d'unifier non seulement leurs systèmes de vente et de commercialisation, mais aussi leurs activités de gestion. Elles achèteront des avions ensemble et partageront leurs bénéfices. [Le directeur général de KLM] souhaite que les deux entreprises fusionnent d'ici deux à trois ans.”²⁰

Ces alliances internationales suscitent de nombreuses interrogations chez les responsables des politiques de la concurrence et des transports des pays Membres de l'OCDE. Ainsi, aux États-Unis, un comité du National Research Council chargé de la concurrence entre les compagnies aériennes relève dans un rapport récent :

“Certains observateurs jugent encore plus alarmante la prolifération des alliances entre compagnies américaines et étrangères, souvent d'autant plus faciles à mettre en œuvre que, dispensées de respecter la réglementation antitrust, ces dernières peuvent harmoniser leurs tarifs, leur capacité offerte, leurs horaires et leurs activités de commercialisation. Si certains voyageurs sont avantagés par ces alliances sur les marchés connexes, les gains potentiels pour les clients des marchés principaux (routes entre deux points d'accès sur lesquelles les compagnies associées étaient auparavant en concurrence) ne sont pas flagrants et il n'est pas exclu que cette catégorie de voyageurs y perde. En outre, ces alliances pourraient avoir pour effet, à long terme, d'exclure les compagnies américaines non membres des marchés internationaux en détournant le trafic d'apport et en affaiblissant la structure générale de leurs réseaux, au préjudice de la concurrence sur le marché intérieur. Il convient de se demander expressément si le développement de ces alliances est compatible avec les objectifs de l'aviation internationale à longue échéance, tels que la suppression des barrières à l'entrée et le renforcement de la concurrence entre compagnies aériennes les plus performantes dans un cadre multilatéral ou mondial.”²¹

3. Nature de la concurrence dans les services aériens

Examinons maintenant les spécificités de la concurrence dans les services aériens, pour évaluer les formes de concurrence qui s'instaureront en situation d'équilibre, et les effets des fusions et alliances sur cette concurrence.

3.1 Introduction

Le secteur des transports aériens est-il naturellement concurrentiel ? Ou bien existe-t-il une limite au degré de concurrence que l'on peut escompter en situation d'équilibre ? Cette question est essentielle dans la mesure où certains ont fait valoir que le transport aérien est en train de passer d'un "extrême, caractérisé par la réglementation et l'appartenance au secteur public, à un autre, dans lequel on assiste à un regroupement mondial, avec entre les deux peu ou pas d'exposition à la concurrence".²² La tendance à la fusion et aux alliances reflète-t-elle simplement les forces du marché ou la recherche préjudiciable d'un pouvoir de marché ?

Le degré de concurrence qui peut s'instaurer durablement dans une industrie en situation d'équilibre dépend des caractéristiques aussi bien de l'offre que de la demande dans ce secteur. Si on considère d'abord les économies d'échelle, il est bien connu qu'une véritable concurrence ne pourra se maintenir dans un secteur lorsque des économies d'échelle au sens traditionnel peuvent être réalisées au niveau des coûts, c'est-à-dire que les coûts moyens d'une entreprise baissent quand sa production augmente. La concurrence ne pourra pas non plus se maintenir dans un secteur où des économies d'échelle sont possibles du côté de la demande, c'est-à-dire quand la demande des produits d'une entreprise augmente avec la production de cette entreprise.

Les économies de gamme, en revanche (que ce soit du côté de la demande ou de celui des coûts) n'influent pas nécessairement sur le degré de concurrence qui peut s'instaurer durablement dans une industrie. Une industrie caractérisée par des économies de gamme traditionnelles - c'est-à-dire que le coût lié au fait de produire ensemble une gamme de produits est inférieure à celui de la production de n'importe quelle combinaison de ces produits - ou par des économies de gamme du côté de la demande - c'est-à-dire que la demande d'une gamme de produits est plus forte que si les produits étaient proposés individuellement - peut néanmoins être concurrentielle. Toutefois, dans l'un et l'autre cas, l'entrée sur le marché n'est pas possible au niveau de la ligne individuelle de produits. Pour être compétitive, chaque entreprise du secteur doit fabriquer tout l'éventail des produits pour exploiter les économies de gamme.

Lorsque des économies de gamme se combinent à des économies d'échelle même limitées dans certains produits, la concurrence peut devenir impossible à long terme sur un large éventail de produits. Si par exemple la demande est limitée sur certains produits de sorte que le marché de ces produits ne permet pas la concurrence, en présence d'économies de gamme l'entreprise qui fabrique ces produits bénéficie d'un avantage concurrentiel dans la production d'un large éventail d'autres produits. Dans les secteurs caractérisés par de fortes économies de gamme, l'existence d'un ou deux marchés sur lesquels la concurrence ne peut se maintenir fera que la concurrence ne peut se maintenir sur de larges segments de l'industrie.²³

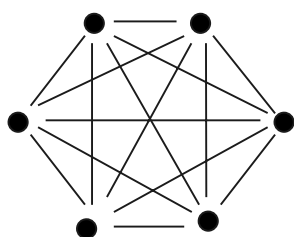
Ces concepts ont une application directe dans le transport aérien. Des études ont montré qu'au-delà d'un certain niveau de trafic sur un marché entre deux villes, les rendements d'échelle sont constants dans ce secteur.²⁴ Toutefois, comme on l'a vu précédemment, il est clair que les rendements d'échelle croissants restent à exploiter dans les services aériens sont limités. Les coûts d'exploitation par passager sont plus bas sur les gros avions à réaction que sur les avions plus petits. Jusqu'à un seuil de trafic, les coûts moyens sur un marché donné entre deux villes baissent. Comme nous le verrons, il existe des économies de gamme aussi bien du côté de la demande que du côté des coûts dans le transport aérien. Les compagnies dotées de vastes réseaux bénéficient d'un avantage concurrentiel puissant, notamment sur les liaisons en provenance et à destination de leurs aéroports-pivots ("hubs"). Dans ces conditions, la concurrence entre compagnies sur un marché du transport aérien déréglementé semble prendre la forme d'une concurrence entre grands réseaux de compagnies aériennes ayant une assise régionale, dont les activités sont centrées sur un ou deux aéroports-pivots et qui sont en position dominante sur les routes en provenance et à destination de ces aéroports-pivots.

3.2 Organisation en étoile (*hub-and-spoke*)

Comme on l'a vu, il existe dans l'industrie du transport aérien un niveau d'efficacité minimal donné des activités. Les avions à grande capacité ont tendance à être plus efficaces (sur la base du coût unitaire) que les avions plus petits. Une compagnie aérienne confrontée à une demande insuffisante sur un marché donné pour remplir un avion à grande capacité est incontestablement pénalisée sur le plan des coûts. L'existence d'économies d'échelle même limitées dans la production des compagnies aériennes a eu un effet spectaculaire sur la structuration optimale des routes. Comme on l'a souvent fait observer, l'existence de certaines économies d'échelle transforme notamment la structure optimale des routes, les réseaux point à point étant remplacés par ce que l'on appelle des réseaux en étoile.

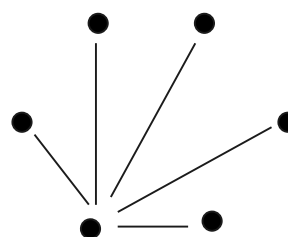
On peut facilement illustrer les effets d'une organisation des activités selon un réseau en étoile. Supposons qu'une compagnie aérienne desserve un ensemble de n villes. En l'absence d'économies d'échelle, la compagnie pourrait assurer ces dessertes avec des vols directs reliant les villes deux à deux (en assurant $n(n-1)/2$ liaisons). Mais s'il existe des économies d'échelle et si certaines liaisons ne génèrent pas un trafic suffisant pour permettre une exploitation avec un degré d'efficacité minimal, il est possible d'abaisser les coûts unitaires totaux en diminuant le nombre de liaisons, et en augmentant le trafic sur les liaisons restantes. De fait, les mêmes n villes, sans suppression de services, peuvent être desservies avec simplement $n/1$ liaisons, ce qui réduit le nombre total des liaisons desservies et augmente le trafic moyen sur chaque liaison d'un facteur de $n/2$. C'est ce que montre l'illustration ci-dessous, pour six villes :

Réseau point à point



15 liaisons de desserte distinctes

Réseau en étoile



5 liaisons de desserte distinctes

Même quand le trafic est suffisant sur une liaison pour atteindre le niveau d'efficacité minimale, une exploitation en étoile peut aider à accroître la fréquence des vols (et donc accroître le niveau global de la demande), sans que sur un vol quelconque le trafic ne tombe en dessous du niveau d'efficacité minimale. De plus, avec une exploitation en étoile, il est possible de desservir des aéroports au départ desquels le volume de trafic vers une quelconque autre ville ne serait pas suffisant (dans une exploitation point à point) pour justifier une telle desserte.

"Toutes les grandes compagnies aériennes sont maintenant organisées autour d'un ou plusieurs aéroports-pivots où un grand nombre de leurs passagers longue distance changent d'avion. Ce système permet aux transporteurs d'obtenir un meilleur taux de remplissage de leurs avions et d'accroître la fréquence des vols sur les liaisons sans escale entre leurs aéroports-pivots et les autres aéroports. ... Pour la plupart des déplacements entre des aéroports autres que les aéroports-pivots, l'éventail des horaires de départ a été sensiblement accru par la structure en étoile. Une liaison à faible fréquentation qui bénéficiait d'une ou deux dessertes sans escale quotidiennes dans le système réglementé bénéficiera vraisemblablement aujourd'hui d'une dizaine de dessertes possibles voire davantage, avec changement d'avion via différents aéroports-pivots, réparties sur

la journée. Enfin, le système en étoile s'est traduit par une meilleure utilisation d'aéroports satellites comme Oakland, Burbank ou Orange County en Californie."²⁵

Les pressions en faveur d'une exploitation en étoile sont fortes, mais on note également certains facteurs en termes de coût et de demande qui jouent dans l'autre sens. Bien que l'exploitation en étoile abaisse les coûts unitaires du fait d'une augmentation des coefficients de remplissage, elle allonge les distances, ce qui augmente le coût moyen et la durée moyenne d'un déplacement. Comme on l'a vu, pour des passagers pressés par le temps un service de correspondance (par un aéroport-pivot) peut ne pas être une solution de remplacement satisfaisante à une desserte directe. Dans certains pays, la dispersion géographique des villes ne sera pas favorable à une exploitation en étoile. De plus, des restrictions réglementaires nationales et internationales sur les services aériens empêchent souvent les compagnies de tirer pleinement parti d'une structure en étoile²⁶.

3.3 *Economies de gamme traditionnelles agissant sur les coûts*

A première vue, on pourrait penser que les avantages en termes de coût procurés par une exploitation en étoile font qu'un grand réseau bénéficie d'un avantage de coût sur un réseau plus petit ou sur un opérateur de liaisons point à point, du fait que les petits transporteurs (c'est-à-dire les compagnies exploitant des liaisons point à point) ne peuvent bénéficier du trafic de rabattement qui assure des coefficients de remplissage et d'efficacité économique élevés sur les routes très empruntées. Cet argument est toutefois incomplet. Comme les voyageurs peuvent changer dans un aéroport-pivot non seulement d'avions mais aussi de compagnies, une compagnie exploitant des liaisons point à point peut quand même bénéficier du trafic de rabattement apporté par d'autres compagnies exploitant d'autres liaisons radiales au départ et à destination de l'aéroport-pivot. Pour qu'il y ait économies de gamme, il faut qu'une même compagnie retire un certain avantage en termes de coûts du fait qu'elle exploite deux ou plusieurs routes radiales au départ et à destination d'un aéroport-pivot²⁷.

Il existe trois sources possibles de tels gains d'efficacité en termes de coût, à savoir :

- premièrement, les routes radiales au départ et à destination d'un aéroport-pivot sont des intrants complémentaires dans la fourniture de services de transport de bout en bout. Les liaisons radiales sont donc en relation verticale les unes avec les autres. Si la concurrence sur chaque radiale n'est pas parfaite, les compagnies exploitant chaque radiale pratiqueront des tarifs supérieurs au coût marginal. Ces marges s'accumulent, conduisant à un problème connu sous le nom de "double marginalisation". L'intégration verticale permet d'éliminer cette inefficacité ;
- deuxièmement, un voyageur peut rencontrer des retards ou des problèmes du fait de divers imprévus, comme la météorologie ou la surréservation. Lorsqu'un déplacement implique plusieurs étapes, un retard ou un imprévu sur l'une des étapes peut entraîner des problèmes pour les correspondances sur les autres étapes. Quand les liaisons sont exploitées par des compagnies aériennes indépendantes, le voyageur peut être confronté à des coûts plus élevés ou à des difficultés pour mener à bien son déplacement. De plus, il peut arriver que les différentes compagnies aériennes ne prennent pas en compte les effets qu'aura la surréservation en perturbant les réservations sur les étapes suivantes. Les alliances entre compagnies aériennes peuvent atténuer ces problèmes. L'intégration verticale abaisse les coûts de transaction associés au fait de fournir un service de bout en bout "sans rupture", souhaité par les voyageurs ;

- troisièmement, la coordination des vols, des portes d'embarquement et des horaires d'arrivée et de départ indispensable pour assurer un service en étoile efficient peut nécessiter des investissements au niveau de l'amélioration des relations. La mise en place d'un système d'exploitation en étoile efficient nécessite une coordination relativement étroite dans l'aéroport-pivot. Les vols à l'arrivée doivent être planifiés pour correspondre avec les vols au départ. Les passagers des vols à l'arrivée doivent débarquer par des portes situées relativement près de celles des vols au départ. Les bagages en provenance des vols à l'arrivée doivent être transférés avec efficacité sur les vols au départ. Pour coordonner toutes ces activités des compagnies aériennes, certains investissements sont donc nécessaires pour améliorer les relations. Une fois ces investissements effectués, les compagnies aériennes sont confrontées au comportement stratégique des autres compagnies, ce qui augmente une fois de plus les coûts de transaction. Ces problèmes peuvent être résolus au moyen de contrats à long terme détaillés ou d'une intégration verticale.

Ces effets conduisent à des gains d'efficacité manifestes (économies de gamme) dans l'exploitation des aéroports-pivots. Brueckner et Whalen (1998) ont constaté que les routes transatlantiques comportant plusieurs escales sont 18 à 28 pour cent moins chères lorsqu'elles sont exploitées par un même réseau que lorsque la même liaison est assurée par deux transporteurs ou plus n'ayant pas d'accord entre eux. Dans un document antérieur, Brueckner, Dyer et Spiller (1990) ont constaté qu'à la suite d'une fusion entre Northwest et Republic les tarifs pour les voyageurs qui transitaient par Minneapolis (aéroport-pivot commun), sans toutefois y faire escale, avaient baissé de 1.5 pour cent par rapport aux tarifs moyens de l'industrie entre le second trimestre de 1986 et le second trimestre de 1987²⁸. Liu et Lynk (1999) résument ainsi la situation d'ensemble :

"Des études de coûts (américaines) utilisant des chiffres d'avant la déréglementation n'ont pas permis de mettre en évidence un quelconque avantage sur le plan des coûts pour les réseaux de compagnies aériennes ayant atteint la taille d'une grande compagnie. En développant des réseaux en étoile, les transporteurs semblent être parvenus à réaliser des économies de gamme, en exploitant avec plus d'efficacité que précédemment les économies techniques de densité".²⁹

3.4 Programmes de fidélisation et économies de gamme agissant sur la demande

Dans le transport aérien, les économies de gamme traditionnelles sur le plan des coûts découlant d'une fusion ou d'une alliance peuvent ne pas être aussi importantes que celles agissant sur la demande. Nous avons déjà vu une forme d'économies de gamme - les voyageurs préfèrent effectuer un voyage entièrement sur une même compagnie aérienne - car cela diminue les problèmes qui pourraient surgir en cas de changements de compagnies du fait de retards, de surréservation ou de problèmes de transfert de bagages. Le souhait d'assurer un service de bout en bout sans rupture peut donc, à lui seul, constituer une forte incitation à l'expansion du réseau.

De plus, tout aussi important est cependant le fait que les compagnies peuvent par des pratiques de marketing faire en sorte que la demande augmente à mesure que la compagnie étend son réseau et multiplie la fréquence de ses services.

Comme dans d'autres industries, l'existence d'économies de gamme agissant sur la demande (également appelées "effets de réseau") implique qu'un changement de fournisseurs doit avoir un coût. Faute de tels coûts, les voyageurs se rendant du point A au point B n'auraient aucun intérêt à savoir si une compagnie assure aussi ou non les liaisons C à D ou C à E, tout comme un consommateur qui recherche un type de céréales données pour le petit déjeuner ne se soucie pas de savoir si le producteur de ces céréales produit également d'autres types de céréales ou des produits entièrement différents. Mais lorsque le

changement de fournisseur a un coût, les consommateurs sont soucieux de connaître toute la gamme des produits vendus par chaque entreprise³⁰.

Les compagnies aériennes s'efforcent de relever le coût lié au fait de changer de transporteur de trois manières, désignées collectivement par l'expression de "programmes de fidélisation", qui sont :

- les programmes dits "grands voyageurs", que les compagnies utilisent pour faire bénéficier leurs clients fidèles de billets gratuits ;
- les systèmes d'incitation des agences de voyage (comme les programmes de super-commission des agents de voyage) pour qu'elles dirigent l'essentiel de leurs ventes de billets vers une compagnie donnée ; et
- la négociation d'arrangements particuliers avec les grands comptes, pour inciter ces entreprises à confier l'essentiel (ou la quasi-totalité) des déplacements de leur personnel à une seule compagnie.

Au passage, on peut ajouter que les grandes compagnies peuvent, pour s'approprier une part plus grande de la demande par rapport aux petites compagnies, avoir recours à d'autres pratiques :

- ainsi, quand une compagnie permet à un voyageur de modifier mais non d'annuler une réservation à la dernière minute, le voyageur dont les plans sont incertains préférera une compagnie offrant des vols plus fréquents vers la même destination qu'une compagnie qui n'a qu'un vol par jour ;
- si les compagnies perçoivent un droit annuel fixe pour des services spécifiques comme l'accès à des zones ou salons d'attente ou à des services de transport terrestre et s'il faut avoir un billet valide ou une carte d'embarquement sur l'un des vols de la compagnie pour accéder à ces salons, le prix de l'accès à ce salon fonctionne comme un coût fixe lié au fait d'être "en relation" avec plus d'une compagnie.

3.4.1 Programmes "grands voyageurs"

Les programmes grands voyageurs correspondent à une réduction sur le volume. Quand un client emprunte les vols d'une compagnie aérienne offrant un programme grands voyageurs, la valeur des vols qu'il effectuera par la suite est augmentée par le fait que cela étend ses possibilités de déplacement gratuit. "Comme la valeur marginale du gain augmente à mesure que le client accumule des miles ou des points sur la même compagnie, les programmes grands voyageurs encouragent les voyageurs à choisir la compagnie sur laquelle ils ont le plus de chances de voler à l'avenir"³¹.

L'effet de fidélisation sera plus ou moins marqué selon la rapidité avec laquelle il est possible d'accumuler des crédits de voyage gratuit, selon la taille du réseau de la compagnie et selon l'endroit où réside l'intéressé. Plus le réseau de la compagnie est vaste, et plus l'offre de voyages gratuits est intéressante dans la mesure où davantage de possibilités s'offrent aux grands voyageurs (la nature des destinations peut également avoir une importance). Plus le nombre de vols proposés par la compagnie dans la ville de résidence du client est important, plus ce dernier a des chances d'emprunter une route desservie par la compagnie, plus vite il accumule des points, plus grand est le choix des destinations possibles avec des billets gratuits et plus il y a également de chances qu'il existe un vol sans escale vers la destination souhaitée. Comme c'est au départ de leurs aéroports-pivots que les compagnies aériennes offrent le plus large choix de vols sans escale, la contribution des programmes grands voyageurs à l'augmentation de la

demande sera particulièrement importante dans les villes où la compagnie a implanté ses aéroports-pivots³².

Comme les voyageurs paient en définitive leurs déplacements gratuits en acquittant des prix plus élevés sur leurs déplacements payants, on peut se demander pourquoi les compagnies n'abaissent pas simplement leurs tarifs sans avoir recours à l'incitation des voyages gratuits. La réponse est que la plupart des voyageurs (notamment ceux qui se déplacent à titre professionnel) ne paient pas eux-mêmes leurs billets. "Les programmes grands voyageurs sont destinés principalement aux voyageurs d'affaires qui exploitent la problématique principale - agent liée au fait que le voyageur, n'étant pas surveillé de façon parfaite par son employeur, ne fait pas l'arbitrage le plus efficient entre les prix bas, ou la réduction du temps de déplacement, et les gains supplémentaires procurés par les programmes grands voyageurs³³. En substance, le gain procuré par le programme grands voyageurs est un versement à l'agent qui achète, en l'occurrence l'employé. Dans une enquête auprès des agences de voyage réalisées par le General Accounting Office des Etats-Unis³⁴, plus de la moitié ont déclaré que leurs clients d'affaires choisissaient des vols couverts par leur programme grands voyageurs (de façon systématique ou quasi systématique)"³⁵.

3.4.2 Programmes d'incitation des voyagistes

Les compagnies peuvent également agir sur la demande de services qu'elles offrent en proposant des incitations aux voyagistes :

"Les programmes de supercommission des agents de voyage sont aux voyagistes ce que les programmes grands voyageurs sont aux voyageurs d'affaires. La plupart des voyagistes peuvent touchés des commissions plus élevées d'au moins une compagnie en orientant les passagers sur les vols qu'offre cette compagnie. ... Les professionnels s'accordent à penser que ces programmes sont surtout efficaces pour la compagnie dominante au niveau local³⁶. Tout comme pour les programmes grands voyageurs, les primes perçues en cas d'augmentation des réservations sur une compagnie sont conçues pour encourager l'agent à concentrer les réservations sur un même transporteur"³⁷.

Les programmes d'incitation en faveur des voyagistes semblent être particulièrement efficaces pour augmenter la demande. Ainsi, en 1995 Air South, une compagnie bon marché qui s'inquiétait de sa difficulté à attirer des voyageurs d'affaires sur ses routes dans le sud-est des Etats-Unis a embauché un consultant privé chargé de voir dans quelle mesure des voyagistes avaient pu détourner une partie du trafic vers d'autres compagnies qu'Air South.

"Le consultant a découvert que des agences dans certaines villes dominées par une compagnie ne proposaient souvent pas les vols d'Air South en réponse aux demandes anonymes, alors même que ces vols apparaissaient dans les SRI. A Miami, par exemple, dans 56 pour cent des cas les agences de voyage n'informaient pas immédiatement les personnes qui appelaient de l'existence de vols Air South, et même après que ces personnes aient demandé quels étaient les tarifs les plus bas, dans encore 30 pour cent des cas ces agences ne mentionnaient toujours pas Air South. A la place, les agences recommandaient fréquemment des vols sur American Airlines, qui est le plus gros transporteur à Miami."³⁸

La GAO rend compte également de l'expérience de Midwest Express et de Southwest Airlines, qui l'une et l'autre ont été contraintes de renoncer à l'exploitation de routes en provenance et à destination de Detroit en grande partie en raison des effets du programme de super-commission mis en place par Northwest à Detroit pour conserver le marché des voyages d'affaires³⁹. Soucieux des effets possibles sur la

concurrence, le ministère de la Justice a ouvert une enquête sur les programmes de super-commission en 1994. L'enquête a été close sans poursuite en 1996⁴⁰.

3.4.3 *Systemes de fidelisation negociée directement*

Les compagnies peuvent également négocier directement la fidélisation de leurs clients de grandes entreprises.

"Une proportion importante et croissante de voyageurs d'affaires se déplacent dans le cadre de tarifs contractuels négociés entre la compagnie aérienne et le responsable des voyages de l'entreprise. La plupart de ces responsables semblent favoriser les compagnies qui ont les réseaux les plus denses, facilement accessibles depuis les grands centres de l'entreprise. Les compagnies qui ne proposent pas de réseaux intéressants avec des services sans escale appropriés ne pourront pas obtenir de contrat avec l'entreprise, même si elles offrent des réductions plus importantes. Les compagnies dont les réseaux sont les plus étendus ont également un avantage sur les petites compagnies aux réseaux moins développés dans une ville donnée, du fait que les transporteurs conditionnent souvent tout contrat avec une entreprise au fait que celle-ci s'engage à assurer des parts données du marché sur plusieurs dessertes de villes."⁴¹

En résumé, pour le ministère de la Justice des Etats-Unis :

"Les préférences des grands voyageurs et les programmes de réduction en faveur des entreprises auront tendance à renforcer les préférences des voyageurs d'affaires pour le transporteur assurant sans escale depuis un aéroport-pivot la desserte d'un certain nombre de villes. Ainsi, pour les voyageurs d'affaires au départ de Dallas, la position de force dont bénéficie American du fait qu'il s'agit de son aéroport-pivot rend le programme grands voyageurs de cette compagnie de loin le plus intéressant. De plus, les sociétés ayant leur siège à Dallas et dont les employés voyagent beaucoup préféreront négocier un contrat de voyages d'affaires avec American dans la mesure où cette compagnie est la mieux placée pour répondre aux besoins de leurs employés. American peut renforcer et, de fait, renforce effectivement cette préférence en exigeant, comme condition pour bénéficier de réductions, que les entreprises s'adressent à American pour tous leurs besoins de déplacement. Si une compagnie comme United souhaitait s'approprier une partie de la clientèle d'affaires basée à Dallas qui utilise le service DFW-LON sans escale d'American au profit de son service desservant DFW-ORD-LON, le programme grands voyageurs de United n'entrerait guère en ligne de compte et les réductions proposées par United aux entreprises devraient être sensiblement plus fortes que celles accordées par American"⁴².

Avec les programmes de fidélisation, les compagnies sont en mesure d'augmenter la demande en leur faveur en élargissant l'éventail et la fréquence des services. En pratique, il existe ce que l'on pourrait appeler des économies d'échelle et de gamme agissant sur la demande. Leur effet est particulièrement important pour les vols au départ ou à destination d'aéroports-pivots.

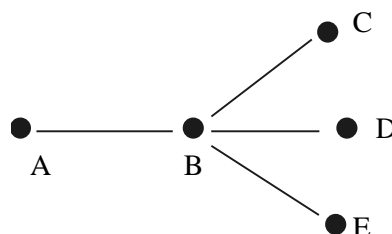
3.5 *Conséquences des économies de gamme pour l'industrie du transport aérien*

Les sections qui précédaient ont montré l'importance de certaines économies de gamme agissant sur les coûts et la demande dans l'industrie du transport aérien. Ces économies de gamme ont deux effets importants.

Le premier est que puisque la demande de services d'une compagnie aérienne augmente avec la diversité et la fréquence des services qu'elle offre, il existe des incitations claires pour une entreprise à s'engager dans des fusions ou des alliances avec d'autres compagnies. L'incitation est particulièrement forte pour une fusion ou une alliance avec des compagnies qui soit partagent le même aéroport-pivot (compagnies régionales par exemple) soit exploitent des réseaux complémentaires. On note donc une tendance à l'existence de compagnies en position dominante sur les aéroports-pivots.

L'autre effet important est que par suite des économies de gamme, il peut arriver que la concurrence sur les liaisons sans escale ne puisse se maintenir sur les routes radiales (sauf sur les routes sans escale vers l'aéroport-pivot d'un autre réseau, qui offrent des correspondances avec des réseaux aux deux extrémités). Prenons l'exemple d'une situation de concurrence sur la route A-B du réseau ci-dessous, dans lequel B est un aéroport-pivot du réseau de la compagnie, qui dessert également C, D et E :

Figure 4. : Représentation schématique d'un réseau en étoile



Les économies de gamme identifiées précédemment ont un certain nombre d'effets sur la concurrence sur la route A-B :

- du fait des économies de gamme agissant au niveau des coûts, la compagnie établie bénéficie d'un avantage de coûts dans l'offre de services de desserte des liaisons A-B-C, A-B-D et A-B-E. (En particulier, pour les vols dans l'un ou l'autre sens sur ces routes, la compagnie établie peut éliminer le problème de la double marginalisation et mieux coordonner les vols de départ et d'arrivée pour assurer un service sans rupture). Avec cet avantage de coût, la compagnie établie pourra fixer le tarif des services de correspondance de telle manière qu'elle s'approprie l'ensemble du trafic de correspondance ou "de rabattement". Si la compagnie établie peut couper ses concurrents de ce trafic de rabattement, les concurrents sont limités au seul trafic A-B (trafic local). On peut imaginer que dans certaines situations ce trafic local ne suffise pas à lui-seul à permettre à un nouveau concurrent d'exploiter de façon viable le service. Même lorsque le trafic est suffisant pour permettre le maintien d'un service indépendant, le nouvel entrant ne bénéficiera pas des mêmes volumes totaux de trafic et il ne pourra s'aligner sur la fréquence de vols de la compagnie établie ;
- même lorsqu'il existe un trafic local suffisant pour permettre le maintien de certains vols A-B, les avantages procurés par les programmes de fidélisation de la compagnie établie constituent un avantage concurrentiel puissant sur les vols au départ de B, notamment pour les voyageurs sur lesquels les marges sont importantes, qui prennent souvent l'avion. De ce fait, la compagnie établie peut offrir un service plus intéressant en se contentant de s'aligner sur le tarif proposé par le nouveau concurrent. Inversement, ce dernier devra offrir une réduction importante par rapport au tarif de l'opérateur établi pour attirer un volume suffisant de trafic. Dans les cas les plus extrêmes, le nouveau concurrent n'attirera qu'un faible trafic de A vers B, ce qui augmentera ses coûts moyens pour la desserte aller-retour de la route A-B.

La concurrence pourra durablement se maintenir sur la route A-B si (i) la compagnie concurrente maintient ses coûts à un niveau sensiblement plus bas que ceux de la compagnie établie, (ii) la compagnie concurrente offre un produit sensiblement différent de celui de la compagnie établie (en se différenciant d'une quelconque façon) soit (iii) A est un pivot pour la compagnie concurrente, ce qui lui donne un certain pouvoir contrebalançant celui de la compagnie établie.

Cette analyse met en évidence les trois propositions suivantes :

- Premièrement, une compagnie desservira vraisemblablement une proportion élevée de l'ensemble des routes sans escale au départ de son ou ses aéroports-pivots.

C'est ce que confirme la tendance à la domination des aéroports par une seule compagnie. "Les compagnies restructurant leurs réseaux linéaires en réseaux en étoile, de nombreux aéroports sont maintenant dominés par un seul transporteur. Dans neuf des 25 plus grands aéroports, le transporteur dominant assure plus de 50 pour cent des embarquements dans l'aéroport."⁴³

- Deuxièmement, les réseaux de compagnies vont occuper vraisemblablement une position dominante et bénéficier d'un pouvoir de marché sur les routes sans escale au départ ou à destination des aéroports-pivots du réseau.

Comme le note Borenstein : "Il a été clairement et fréquemment démontré que les prix moyens pour le trafic local sur les aéroports faisant office de plate-forme de regroupement sont sensiblement plus élevés que pour les autres routes⁴⁴. ... Des études économétriques ont mis en évidence cet effet, abstraction faite du volume de trafic, de la répartition voyages d'affaires/voyages touristiques, du nombre de changements d'avion qu'un passager doit effectuer, de l'hétérogénéité des coûts des compagnies aériennes, des concentrations et parts de marché sur des routes spécifiques, des encombrements propres aux différents aéroports et de nombreux autres facteurs. Cet effet, toutefois, ne se vérifie pas pour les itinéraires sur lesquels le passager se contente de changer d'avion aux aéroports de regroupement ; les passagers en transit utilisant ces aéroports acquittent des prix à peu près équivalents à la moyenne nationale"⁴⁵.

Evans et Kessides en conviennent : "Le transporteur [A] qui occupe une position dominante dans l'exploitation du trafic transitant par une ville tend à pratiquer des tarifs sensiblement plus élevés sur les liaisons au départ ou à destination de cette ville. Ce résultat a maintenant été reproduit dans plusieurs études. Le transporteur dominant bénéficie d'une "prime" de 4.7 à 16 pour cent sur le trafic au départ ou à destination de la ville où il est en position dominante. Cet effet sur les prix est sensiblement plus élevé que toute hausse de prix induite par l'absence de concurrence potentielle ou effective que nous avons pu estimer au niveau des routes."⁴⁶

- Troisièmement, les routes de pivot à pivot (route reliant le pivot d'un réseau au pivot d'un autre réseau) vont vraisemblablement être desservies de façon prédominante ou exclusive par les réseaux à chaque extrémité. Auquel cas, les deux réseaux bénéficieront vraisemblablement d'un pouvoir de marché sur ces routes.

Comme le note Borenstein : "Les réseaux en étoile ont évolué au point qu'une compagnie n'assurera généralement un vol vers l'aéroport-pivot d'une autre compagnie que depuis son propre pivot. United, par exemple, offre un service sans escale à destination d'Atlanta - grand aéroport-pivot de Delta - au départ de Denver, Chicago-O'Hare et Washington-Dulles - trois des quatre principaux pivots de United. ... Les marchés des vols en provenance et à

destination des aéroports-pivots ont tendance à être davantage concentrés que pour les autres aéroports".⁴⁷

"Il est peu probable qu'un quelconque transporteur puisse prendre pied pour assurer un service sans escale sur le marché des liaisons entre aéroports-pivots sans disposer lui-même d'un aéroport-pivot à l'une des extrémités de la liaison. Un transporteur opérant depuis l'un de ses aéroports-pivots ... bénéficie sur le plan des coûts d'avantages significatifs sur un transporteur qui tente d'offrir un service au départ de cet aéroport, si ce n'est pas pour lui un aéroport-pivot. La mise en place d'un pivot concurrent dans la même ville nécessiterait des investissements considérables en temps et en argent, ce qui apparaît peu vraisemblable sous l'effet d'augmentations de tarifs sur le marché des liaisons entre pivots La venue de nouveaux concurrents est également gênée par d'autres facteurs, notamment les difficultés rencontrées pour obtenir des droits d'accès aux portes d'embarquement, les effets des programmes d'incitation des voyageurs proposés par les transporteurs dominants, les programmes grands voyageurs et le risque de réactions agressives à l'égard du nouveau concurrent par l'opérateur dominant desservant un marché donné".⁴⁸

Ainsi Northwest Airlines exploite des pivots à Detroit, Minneapolis et Memphis. Continental exploite des pivots à Newark, Cleveland et Houston. Cela fait donc neuf routes de pivot à pivot. La part de marché de Northwest et Continental n'est pas inférieure à 100 pour cent sur sept de ces neuf routes (voir tableau 1). Sur les deux routes restantes, la part de marché combinée de Northwest et Continental est de 94 pour cent (Detroit-Cleveland) et 87 pour cent (Detroit-Newark).

Tableau 2. : Parts de marché de Northwest/Continental sur les routes entre leurs aéroports-pivots

Route	Part combinée de NW et CO sur les vols sans escale :
Detroit-Cleveland	94 %
Detroit-Newark	87 %
Detroit-Houston	100 %
Minneapolis-Cleveland	100 %
Minneapolis-Newark	100 %*
Minneapolis-Houston	100 %
Memphis-Cleveland	100 %*
Memphis-Newark	100 %
Memphis-Houston	100 %

* Tous ces vols sont assurés par Northwest

Source : DOJ (1998)

Ces trois propositions résument les principales spécificités de la concurrence entre réseaux de compagnies aériennes. Incidemment, il est utile de se rappeler que si la concurrence est limitée sur les routes radiales sans escale et les routes de pivot à pivot, cela ne signifie pas que la concurrence soit nécessairement limitée sur les vols avec correspondance sur les mêmes routes ou sur d'autres.⁴⁹ De fait, cette concurrence peut être intense.

3.6 Entrée, sortie, prédation, transparence et collusion

Le fait que certaines compagnies aériennes puissent occuper une position dominante dans des aéroports, sur des routes radiales ou sur des liaisons entre aéroports-pivots ne serait pas préoccupant en soi si les barrières à l'entrée et à la sortie étaient suffisamment faciles à franchir. De fait, lorsque la déréglementation a été engagée aux Etats-Unis, il a été avancé que les coûts irrécupérables étaient négligeables dans le secteur du transport aérien (étant donné que tout l'équipement nécessaire peut être

facilement loué ou transféré), et que ce dernier constituerait par conséquent un bon exemple de secteur "contestable". On prétendait que même si une compagnie aérienne en venait à occuper une position dominante sur une desserte donnée, elle ne serait pas en mesure d'exercer sa puissance commerciale en raison de la menace d'entrée, immédiate et bien réelle, de nouveaux concurrents sur le marché.

L'avenir devait démontrer que ces propos péchaient par excès d'optimisme. En effet, les coûts irrécupérables des compagnies aériennes sont faibles, mais ils existent. Un nouvel entrant devra assumer les coûts de promotion et de commercialisation de tout nouveau service, sans pouvoir les récupérer s'il sort du marché.

Des recherches démontrent que même si le nombre d'entrants potentiels sur une liaison entre deux villes a bel et bien un effet de discipline tarifaire, cet effet est sans commune mesure avec celui que produit l'existence d'un seul concurrent réel.

"Des études qui tentent d'expliquer une variation transversale des prix moyens arrivent à la conclusion que l'impact d'un concurrent potentiel sur le marché est de trois à dix fois moindre que celui d'un concurrent réel⁵⁰. Rétrospectivement, il n'y a pas lieu de s'étonner du résultat. En effet, si les coûts irrécupérables ne sont pas négligeables, quoique faibles, et qu'un transporteur en place puisse réagir au plan des tarifs et de l'offre aussi rapidement qu'un nouveau concurrent peut faire son entrée sur le marché, le transporteur en place n'aura pas vraiment intérêt à anticiper l'entrée⁵¹. Les dépenses de publicité ainsi que les pertes à court terme associées au lancement d'une nouvelle desserte semblent être des coûts irrécupérables suffisamment importants pour remettre en question la contestabilité dans les marchés du transport aérien"⁵².

3.6.1 *Prédation*

Fait plus important encore, le secteur du transport aérien favorise dans une certaine mesure les barrières stratégiques à l'entrée. Les compagnies aériennes en place (comme on le verra plus loin) peuvent décourager un nouvel entrant en réagissant de façon agressive à sa tentative 'leur réaction pouvant, ou non, être considérée comme un comportement prédateur du point de vue juridique).

Un grand nombre d'actions ont été intentées pour prédation, surtout aux Etats-Unis, où l'une des plus connues concerne Reno Air, qui exploitait des services vers la côte ouest à partir de son mini-pivot situé à Reno (Nevada). En 1993, Reno Air est entrée sur le marché de la liaison Reno-Minneapolis, qui avait été abandonné par Northwest. Face à cette situation, cette dernière, pour laquelle Minneapolis est un aéroport-pivot important, a non seulement repris le service entre Reno et Minneapolis mais a également constitué son propre mini-pivot à Reno et a commencé à faire concurrence à Reno Air sur les liaisons entre Reno et la côte ouest. Le Ministère de la justice des Etats-Unis était en train d'instruire l'affaire lorsque, à la suite d'une intervention du Ministère des transports, Northwest a décidé d'abandonner sa desserte superposée de l'aéroport-pivot de Reno Air.

Plusieurs caractéristiques du secteur du transport aérien font d'une réaction agressive des compagnies en place à l'égard des nouveaux entrants une menace crédible :

- premièrement, comme cela a déjà été expliqué, étant donné les économies de gamme au niveau des coûts, un transporteur en place sera en mesure de pratiquer des tarifs qui priveront l'entrant de trafic de correspondance ou d'apport, ce qui aura pour effet de réduire sensiblement le volume de trafic que celui-ci pourra contester. Si le trafic contesté est suffisamment faible par rapport au nombre de vols du transporteur en place, celui-ci pourra se contenter de réagir en augmentant le nombre de sièges à tarif réduit sur ses vols existants,

accroissant ainsi ses coefficients d'occupation sans avoir à ajouter de nouveaux vols. Etant donné que le coût marginal de ces sièges est bas (les vols auraient eu lieu de toute façon), ce genre de réaction ne sera vraisemblablement pas considérée comme une pratique prédatrice⁵³ ;

- deuxièmement, étant donné la nature des économies de gamme au niveau de la demande, le réseau du transporteur en place sera plus intéressant que celui d'un petit nouvel entrant. Le transporteur en place cherchera peut-être à renforcer encore les atouts dont il dispose par rapport au nouvel entrant, par exemple en offrant des points supplémentaires pour ses programmes de fidélisation de la clientèle ou des remises plus importantes pour les agents de voyage. Fort de cet avantage concurrentiel, le transporteur en place sera en mesure d'évincer du marché un entrant aussi efficace que lui, et cela sans avoir à subir de pertes lui-même⁵⁴ ;
- troisièmement, comme cela a déjà été mentionné, l'un des aspects des économies de gamme (au niveau des coûts) est que chaque route radiale constitue un service complémentaire des autres routes radiales. Si l'une de ces routes est exploitée par un concurrent, celui-ci, en haussant les tarifs sur cette route, fera baisser la demande sur toutes les autres. Si, pour faire face au nouvel entrant, le transporteur en place cède et permet à un entrant d'exploiter une route radiale, à défaut d'une concurrence suffisante sur cette route, les tarifs que pratiquera l'entrant seront supérieurs aux coûts marginaux, ce qui fera baisser la demande sur toutes les autres routes du transporteur en place. Autrement dit, les pertes que subira le transporteur pour avoir abandonné une route sont beaucoup plus importantes que les bénéfices que l'entrant pourra réaliser sur cette même route - le tarif plus élevé pratiqué sur cette route freinera la demande et fera par conséquent diminuer les bénéfices sur toutes les autres dessertes du transporteur en place. En raison de cet écart entre les avantages pour l'entrant et le coût pour le transporteur en place, il est d'autant plus probable que ce dernier défende ses routes radiales contre le nouvel entrant⁵⁵ ;
- quatrièmement, le comportement prédateur (qui consiste à pratiquer des prix inférieurs aux coûts, dans des limites appropriées, dans l'intention d'éliminer un rival) est crédible lorsqu'il procède de l'intention de créer une réputation "musclée" qui découragera à l'avenir les nouveaux entrants sur le même marché ou sur d'autres. Les réseaux des compagnies aériennes se font en général concurrence sur plus d'un marché. C'est pourquoi la réputation acquise sur un marché donné peut avoir des incidences sur de nombreux autres marchés où elle favorisera une augmentation des recettes, ce qui renforce d'autant la crédibilité du comportement prédateur. Des études ont démontré que le nombre de marchés sur lesquels les compagnies aériennes se font concurrence est l'un des facteurs qui expliquent les écarts de prix sur certaines liaisons. (Voir ci-après la section consacrée au contact sur plusieurs marchés) ;
- cinquièmement, dans certains pays de l'OCDE, la compagnie aérienne dominante (en place) appartient encore à l'Etat. Comme dans les autres secteurs, la participation de l'Etat peut alléger les contraintes budgétaires de la compagnie, ce qui rend d'autant plus crédible le risque qu'elle réagisse vigoureusement à un nouvel entrant et subisse des pertes.

Les politiques antitrust classiques concernant le comportement prédateur reconnaissent que la réaction de l'entreprise en place à un nouvel entrant constitue un aspect important du jeu de la concurrence. C'est pourquoi la réglementation antitrust visant le comportement de l'entreprise en place est d'une portée en général relativement limitée. L'entreprise est d'habitude autorisée à riposter vigoureusement à l'arrivée d'un nouveau concurrent à condition qu'elle fixe ses tarifs en dessous de ses coûts dans des limites appropriées et que ses perspectives de les relever ultérieurement pour récupérer la perte ainsi subie soient

raisonnables. Le fait qu'en pratique les entreprises en place ont pu relever leurs prix après la sortie d'un concurrent montre que la récupération des pertes est dans certains cas possible (autrement dit, l'entrée potentielle ne suffit pas à elle seule pour "discipliner" les tarifs). La question fondamentale qui se pose dans le secteur du transport aérien est par conséquent de déterminer l'ampleur des réductions de tarifs et de l'expansion de service qui devraient être autorisées pour réagir à l'entrée en scène d'un nouveau concurrent.

Les arguments énoncés ci-dessus mettent en évidence le fait qu'un transporteur établi disposant d'un réseau en étoile sera capable d'éliminer des rivaux aussi efficaces que lui sur ses routes radiales, et cela même sans pratiquer des tarifs inférieurs aux coûts. Les inquiétudes que suscitent les conséquences de cet état de choses du point de vue de la concurrence sont à l'origine de la proposition d'exercer un contrôle plus rigoureux des pratiques prédatrices, qui consistent à renforcer les restrictions visant la réaction du transporteur en place aux nouveaux entrants.

Par exemple, le ministère des Transports des Etats-Unis, préoccupé par les comportements anticoncurrentiels, a proposé des critères pour déterminer s'il y a "pratique d'exclusion déloyale" dans l'industrie du transport aérien. Ces critères visent à établir, au cas par cas, si la réaction à un nouvel entrant "est conforme aux pratiques observées sur d'autres marchés concurrentiels, notamment ceux où Southwest est présente. En particulier, lorsque le transporteur en place vend un grand nombre de sièges à très bas tarif ou achemine un grand nombre de passagers locaux aux nouveaux bas tarifs de l'entrant, de façon à dépasser la capacité totale de sièges de ce dernier ou le nombre de passagers qu'il peut transporter, le ministère des transports (sauf arguments contraires de poids) ouvrira une enquête en vue de déterminer si le transporteur s'est engagé dans des pratiques déloyales d'exclusion. En outre, le ministère analysera d'autres types de pratiques, telles que les points boni pour grands voyageurs ou les programmes de super-commissions des agents de voyage, pour déterminer si les transporteurs en place visent les entrants par des moyens déloyaux"⁵⁶. Ces propositions ont fait l'objet de nombreuses critiques⁵⁷.

Un économiste britannique, David Starkie, a proposé que les autorités de la concurrence, au lieu de s'attacher à définir ce qui constitue ou ne constitue pas un comportement anticoncurrentiel, se contentent de relever le coût des pratiques prédatrices et réduisent la capacité de l'entreprise en question de récupérer ses pertes en interdisant à la compagnie aérienne en place de relever ses prix une fois évincée la nouvelle compagnie entrante⁵⁸.

Comme on le verra plus loin, il est arrivé que les autorités antitrust subordonnent l'approbation de fusions ou d'alliances à la limitation de la réaction de la compagnie en place à la concurrence d'un nouvel entrant.

Dans certains cas, les compagnies aériennes en place réagissent à l'entrée par d'autres moyens que le prix ou le volume de l'offre. Ainsi, dans une action récente intentée contre le transporteur national italien Alitalia, l'autorité antitrust italienne a jugé que les pratiques de la compagnie, qui consistaient à programmer le départ de ses vols cinq minutes avant ceux de deux petits nouveaux entrants, Aliadriatica et Meridiana, avaient causé à ces dernières un préjudice économique important. L'autorité antitrust a fait valoir que les petits transporteurs ne disposaient pas de la logistique nécessaire pour riposter promptement à une telle réaction, ni n'avaient la capacité d'adapter rapidement leurs créneaux de décollage et d'atterrissage. L'autorité a estimé également que les pratiques d'Alitalia avaient en outre valeur de signal à l'intention des nouveaux entrants potentiels sur le marché italien du transport aérien. Elle a condamné la compagnie à une amende de 500 000 \$US.

3.6.2 *Transparence des prix et collusion*

Le secteur du transport aérien non seulement favorise les pratiques prédatrices, mais il comporte aussi certaines caractéristiques susceptibles d'encourager la collusion, à savoir le degré élevé de transparence des prix et des services ainsi que le grand nombre de marchés distincts sur lesquels les grandes compagnies aériennes se font concurrence⁵⁹.

Le transport aérien se caractérise par un degré très élevé de transparence des prix et des volumes d'offre. Tous les tarifs des compagnies aériennes sont instantanément disponibles au moyen des systèmes informatisés de réservation, auxquels les compagnies aériennes rivales peuvent s'abonner. Comme dans d'autres secteurs, cette transparence peut favoriser la collusion dans la mesure où elle facilite la détection du non-respect d'une entente. Borenstein fait remarquer ce qui suit :

"Il semble courant pour une compagnie aérienne d'annoncer, par l'entremise des SIR, qu'elle augmentera son tarif sur une route donnée à compter d'une certaine date. La compagnie attend ensuite de voir si les autres compagnies aligneront leurs tarifs sur le sien. Dans l'affirmative, elle mettra à exécution son projet de hausse de tarif, tandis que dans le cas contraire, elle n'y donnera pas suite ou le reportera à une date ultérieure. Les autres compagnies pourront faire des contre-propositions consistant par exemple à appliquer une hausse moins forte, entrant en vigueur une journée après la date de l'augmentation proposée initialement. La première compagnie pourra alors procéder à une hausse moins forte ou présenter à son tour une contre-proposition. Tout cela se passe sans que les compagnies aériennes n'aient à changer leurs tarifs pour les ventes effectives..."⁶⁰

"Le tarif de chaque compagnie aérienne figurant dans le système informatisé de réservation pour chaque route est affecté d'un code descriptif, qui se présente en général sous la forme d'une série d'au moins cinq caractères alphanumériques et qui peut contenir d'autres renseignements concernant ce que la compagnie aérienne suggère ou en fonction de quel concurrent un tarif pourrait être ciblé⁶¹. Il a été rapporté dans le Wall Street Journal que Continental avait introduit un nouveau tarif sur une route en utilisant un code tarifaire comprenant les lettres "HP", lesquelles correspondent à la désignation de America West, que Continental semblait viser avec son tarif réduit. La présence des lettres "HP" dans le code pouvait avoir pour but d'informer les autres compagnies aériennes que Continental, en réduisant ses tarifs, visait America West et ne cherchait pas à déclencher une guerre générale des prix"⁶².

3.6.3 *Contact sur de nombreux marchés*

Il est avancé depuis longtemps que lorsque des entreprises se font face sur un grand nombre de marchés, il arrive qu'elles se livrent une concurrence moins vigoureuse en se concédant mutuellement des sphères d'influence plus ou moins exclusives. Autrement dit, le nombre de marchés sur lesquels les entreprises se rencontrent est un facteur qui intervient dans la probabilité d'une coordination oligopolistique ou de "collusion tacite"⁶³.

Cette situation s'explique par le fait qu'une entreprise occupant une position dominante sur un marché oligopolistique a davantage à perdre dans une guerre des prix qu'une entreprise possédant une petite part de marché. Cette dernière constitue par conséquent une menace pour les marges de l'entreprise dominante à moins que les rôles ne soient inversés sur un autre marché. Lorsque chaque entreprise dispose d'un ou plusieurs marchés "nationaux" où elle occupe la position dominante, elle aura moins tendance à contester la position dominante d'une entreprise rivale sur le marché "national" de cette dernière, par crainte d'avoir à faire face à la même concurrence sur son propre marché. C'est ainsi que s'instaure en

général une situation du "vivre et laisser vivre". En revanche, se sont surtout les entreprises rivales n'occupant pas de position dominante sur leur marché intérieur qui menacent ces arrangements conviviaux.

Cette situation se retrouve en Europe, où chacune des grandes compagnies aériennes (British Airways, Air France, Lufthansa, KLM, Iberia, Alitalia et SAS) occupe une position dominante sur son marché national. Bien que le cabotage soit autorisé à l'intérieur de l'Europe, très peu de nouvelles compagnies ont fait leur apparition sur ce marché, hormis de petites compagnies comme Ryan Air et British Midland.

Evans et Kessides (1991) constatent que le fait que les compagnies aériennes des Etats-Unis soient en contact sur de nombreux marchés a des effets sensibles sur les prix, faisant augmenter le tarif moyen du billet aller-retour de plus de 20\$.

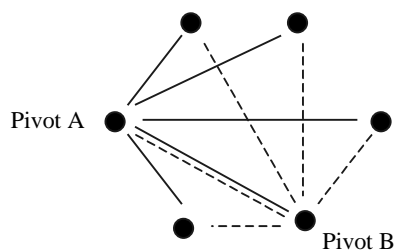
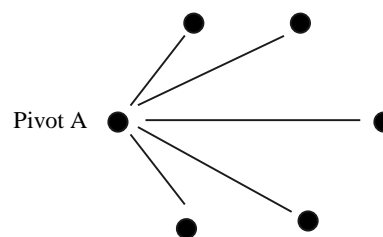
"Le cas de Northwest et Midway est révélateur à cet égard. En 1989, Midway Airlines a réduit ses tarifs à partir de Milwaukee, important marché pour Northwest. Cette dernière a riposté, non pas en alignant ses tarifs sur les tarifs réduits au départ de Milwaukee, mais en cassant les prix au départ de Chicago, l'aéroport-pivot de Midway, où les réductions de prix seraient les plus nuisibles à cette dernière Midway. Cette riposte a forcé Midway à mettre fin à ses tarifs réduits à Milwaukee plus tôt que prévu. Les passagers ont intenté un procès à Northwest pour leur avoir refusé des tarifs plus avantageux. Northwest a réglé le litige en 1991 sans admettre d'infraction"⁶⁴.

3.7 *Effet des fusions et des alliances*

Après avoir examiné la nature de la concurrence entre les compagnies aériennes, nous sommes en mesure de nous pencher sur les effets d'une fusion ou d'une alliance sur la concurrence.

L'alliance ou la fusion de deux réseaux en étoile a trois effets de portée générale : amélioration de l'efficacité (en permettant une rationalisation de la structure du réseau ainsi qu'une meilleure exploitation des économies de gamme au niveau des coûts) ; accroissement de la demande à l'égard du réseau dans son ensemble (grâce aux économies de gamme au niveau de la demande) ; et réduction de la concurrence sur les marchés desservis auparavant (ou qui auraient pu l'être) par les deux partenaires. Pour procéder à une évaluation efficace de l'effet global d'une fusion, il importe de prendre en compte chacun de ces trois effets. C'est ce que nous ferons donc maintenant.

D'abord, une fusion se traduit en général par des gains d'efficacité par rapport aux coûts. Ces gains sont de deux types - d'une part ceux qui découlent de la rationalisation du réseau, d'autre part ceux qui découlent des économies de gamme au niveau des coûts qui sont réalisées à un aéroport-pivot. C'est lorsque les réseaux en cause se chevauchent dans les marchés qu'ils desservent que la possibilité de rationalisation est la plus importante. Dans ce cas en effet, la fusion permettra de renforcer la structure en étoile en recentrant les vols sur les pivots existants, en réduisant le nombre de vols sans escale et en augmentant l'intensité du trafic (ainsi que la fréquence des vols sur les radiales qui se superposent). Cette rationalisation est illustrée dans le diagramme ci-dessous. On constate qu'avant la fusion, il existe deux réseaux qui se recoupent entièrement et qui sont centrés sur des pivots différents. La fusion réorganise le nouveau réseau autour d'un pivot unique :

Avant la rationalisation Réseaux superposés**Après la rationalisation**

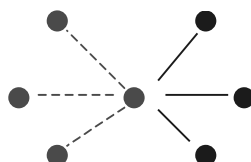
La fusion permettra également de réaliser des gains d'efficacité par rapport aux coûts sur les liaisons qui avaient auparavant leur point de départ dans un réseau et leur point d'arrivée dans l'autre, grâce aux économies de gamme au niveau des coûts dont il a déjà été question. La fusion permettra en particulier une desserte plus intégrée⁶⁵.

Par ailleurs, les effets anticoncurrentiels d'une fusion dépendront du degré de chevauchement des réseaux ou plus précisément du nombre de marchés que les deux réseaux desservait (ou auraient pu desservir). De plus, une fusion aura pour effet de stimuler la demande à l'égard du réseau, ce qui peut accroître le pouvoir de marché du réseau, en particulier aux aéroports-pivots, surtout si la fusion élargit la gamme des services offerts à partir d'un aéroport-pivot.

La situation la plus simple à examiner est celle où les deux réseaux ne se recoupent pas sur les marchés qu'ils desservent (sauf peut-être sur les radiales qui relient les pivots des deux réseaux) et où leurs exploitants ne constituent pas de nouveaux entrants potentiels sur les marchés l'un de l'autre. Tel est le cas des alliances de compagnies aériennes internationales, dans lesquelles les restrictions réglementaires internationales empêchent les deux réseaux d'entrer en concurrence. Les alliances peuvent se traduire par des gains d'efficacité découlant d'une desserte intégrée améliorée. Ces gains doivent être mis en balance avec les effets anti-concurrentiels d'une réduction de la concurrence sur les liaisons inter-pivots et d'un accroissement de la demande à l'égard du réseau dans son ensemble.



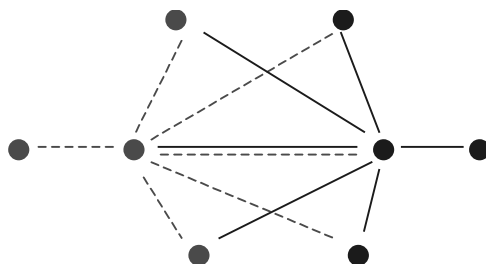
La situation où deux réseaux ne se recoupent pas mais ont un pivot en commun est légèrement plus complexe. En effet, la fusion peut alors engendrer d'importants gains d'efficacité, qui doivent être mis en balance avec l'effet anticoncurrentiel du renforcement du pouvoir de marché dont disposera la nouvelle compagnie née de la fusion à son aéroport-pivot.



Une étude effectuée par Kim et Singal sur toutes les fusions de compagnies aériennes qui ont eu lieu aux Etats-Unis entre 1985 et 1989 révèle que sur les radiales indépendantes reliées à un aéroport-pivot commun, l'effet sur l'efficacité domine : la fusion de deux compagnies solvables desservant ces routes y entraîne une baisse des tarifs de 11 pour cent⁶⁶. Borenstein arrive à la conclusion que la fusion de

Northwest et Republic, réalisée en octobre 1986, s'est traduite par une hausse des tarifs à destination et en provenance de leur aéroport-pivot commun (Minneapolis) de 11 pour cent supérieure à la moyenne nationale enregistrée entre l'année précédant et l'année suivant la fusion. Les hausses tarifaires les plus importantes ont été observées sur les routes où les deux compagnies fusionnées étaient auparavant les seuls concurrents. Ces hausses étaient de 23 pour cent supérieures à la moyenne nationale.

Plus complexes encore sont les situations où les deux réseaux se chevauchent. Dans ce cas, les gains d'efficacité dus à la fusion peuvent être importants en raison de la rationalisation de la structure en étoile. Cependant, la fusion peut également réduire la concurrence sur de nombreux marchés. C'est alors qu'elle pose le plus de problèmes aux autorités de la concurrence. L'étude de Kim et Singal a révélé qu'au cours de la période 1985-1989, c'est en moyenne l'effet sur le pouvoir de marché qui a été le plus sensible. Les prix ont augmenté en moyenne de près de quatre pour cent sur les routes en chevauchement⁶⁷. Fait intéressant, l'étude de Kim et Singal montre également que les prix ont augmenté sur les routes indépendantes, en raison peut-être d'une réduction de la concurrence potentielle, ou d'un renforcement du contact des compagnies sur de nombreux marchés comme cela a déjà été évoqué.



Etude de cas I : Un accord de partage de code entre Alitalia et Meridiana

L'autorité antitrust italienne a interdit un accord de partage de code entre Alitalia et Meridiana, l'un des rares concurrents effectifs d'Alitalia sur les routes intérieures. Cet accord n'a pas pris la forme d'une alliance complète entre les deux compagnies, étant donné que leurs programmes de fidélisation étaient censés demeurer indépendants et que de nombreuses routes continueraient d'être exploitées également de façon indépendante. L'accord était centré sur quatre routes. Sur l'une d'elles uniquement (Rome-Milan), les deux compagnies offraient des services sans escale concurrents. Sur la liaison Catania-Turin, Meridiana offrait un service direct tandis qu'Alitalia assurait un service avec une escale à Naples. Sur les deux autres routes (Bologne-Palermo, Pise-Catania) seule l'une des deux compagnies était présente. Néanmoins, l'autorité a fait valoir que Meridiana était le seul concurrent effectif d'Alitalia sur les marchés intérieurs et que l'accord aurait pu entraîner une réduction sensible de la concurrence. Sur toutes les routes concernées, la demande était suffisante pour soutenir une desserte des deux compagnies. En outre, les avantages escomptés de l'alliance pour les consommateurs ne pouvaient pas être démontrés⁶⁸.

Etude de cas II : Demande de partage d'indicatif American Airlines/TACA Group

En janvier 1998, le Ministère de la justice des Etats-Unis a déposé auprès du Ministère des transports des observations concernant la proposition présentée par American Airlines et le Groupe TACA (un groupe de compagnies aériennes d'Amérique centrale) d'offrir des services à code partagé. Le ministère de la Justice a fait valoir que le ministère des Transports devrait n'accorder que peu d'importance, dans son analyse d'intérêt public, aux gains d'efficacité invoqués par les parties et liés au développement des réseaux et des services ininterrompus sur le marché des liaisons entre les Etats-Unis et l'Amérique centrale. Le projet d'accord de partage de code American Airlines/TACA concerne des réseaux qui se chevauchent dans une large mesure. Ainsi, American Airlines et un transporteur du Groupe TACA exploitent des vols sans escale

faisant double emploi sur pratiquement toutes les lignes entre Miami, principal pivot des Etats-Unis pour l'Amérique latine, et les villes d'accès d'Amérique centrale - y compris les vols entre Miami et Belize City (Belize), Guatemala City (Guatemala), Managua (Nicaragua), Panama City (Panama), San José (Costa Rica), San Salvador (El Salvador), Tegucigalpa et San Pedro (Honduras). En outre, pour les liaisons sans escale faisant double emploi entre Miami et les villes d'Amérique centrale, American Airlines et TACA contrôlent une part de marché combinée qui varie de 88 à 100 pour cent. Le ministère des Transports s'est certes efforcé de limiter au minimum la menace à la concurrence sur les lignes faisant double emploi en subordonnant son autorisation à plusieurs conditions, mais la Division antitrust a expliqué que le ministère ne pouvait éliminer les risques pour la concurrence et que cet accord ne comportait aucun gain d'efficacité important favorable à la concurrence⁶⁹.

4. Concurrence sur les marchés en relation verticale

Il a déjà été noté que la prestation de services de transport aérien fait appel à des intrants fournis par tout un éventail de services aéroportuaires complémentaires : créneaux de décollage et d'atterrissage, services de contrôle de la circulation aérienne, portes, accueil des passagers, manutention des bagages, avitaillement, services de nettoyage et de restauration.

Il arrive que la réglementation, les normes de sécurité ou encore les contraintes d'espace limitent le nombre d'entreprises pouvant fournir ces services. Une fusion ou une alliance entre deux ou plusieurs prestataires risque à la fois de réduire la concurrence sur ces marchés et d'en fausser le jeu dans les services de transport aérien.

4.1 Concurrence dans les services aéroportuaires

Il semble exister dans les services aéroportuaires d'importantes économies d'échelle. Seules quelques très grandes agglomérations sont desservies par plus d'un aéroport, et même là, des facteurs qui différencient ces aéroports limitent souvent le degré de concurrence qu'ils peuvent se livrer. Etant donné ce manque de concurrence, les aéroports ont la possibilité d'exercer un pouvoir de marché. En outre, si une compagnie aérienne pouvait intégrer la prestation des services aéroportuaires, elle se trouverait en position de force pour limiter ou empêcher le développement de services concurrents à l'aéroport en question.

C'est pour cette raison que les aéroports appartiennent à l'Etat dans la plupart des pays. C'est seulement dans quelques-uns que certains aéroports sont privés et réglementés. Comme dans les autres secteurs d'activité, la participation de l'Etat et/ou la réglementation des services aéroportuaires ont souvent été à l'origine d'inefficacités dans la tarification des services aéroportuaires et dans les décisions relatives à

l'expansion de la capacité. Cet état de choses s'est répercuté sur le degré de concurrence dans les services aériens. Lorsque la capacité existante est utilisée de façon inefficace, ou lorsque les possibilités rentables d'accroître la capacité ne sont pas exploitées, de nouvelles compagnies aériennes ne seront peut-être pas en mesure d'avoir accès aux services et installations clés tels que les créneaux de décollage et d'atterrissage, ou les portes. Borenstein fait remarquer ce qui suit :

"Pour de nombreux analystes, les pénuries de capacité aéroportuaire constituent le facteur ayant le plus d'incidence sur la concurrence et l'efficacité dans le transport aérien intérieur. ... Entre 1977 et 1990, le trafic aérien intérieur [aux Etats-Unis] a augmenté de 120 pour cent. Au cours de cette période, on n'a construit aucun nouvel aéroport, tandis que l'expansion des aéroports existants était dans une large mesure entravée par des préoccupations environnementales et la réglementation locale en matière de zonage et de nuisance sonore. La constitution d'aéroports-pivots a également alourdi la charge de nombreux aéroports. Le principe de fonctionnement de l'aéroport-pivot repose sur la programmation de nombreux vols d'arrivée pratiquement à la même heure, et de nombreux départs dans un délai de 30 à 60 minutes plus tard, ce qui fait augmenter la demande de capacité aéroportuaire pour un nombre donné de vols"⁷⁰.

L'incidence des contraintes de créneaux et de portes sur le degré de concurrence est examinée en appendice.

4.2 *Systèmes informatisés de réservation*

Toutes les compagnies aériennes utilisent des systèmes informatiques pour diffuser de l'information sur leurs horaires, la disponibilité des sièges, les tarifs et la réglementation tarifaire, pour effectuer des réservations et émettre des billets. Ces systèmes sont appelés "systèmes informatisés de réservation" (SIR).

Il semble exister des économies d'échelle dans la prestation de services informatisés de réservation. En effet, les coûts du matériel, des logiciels et des installations de télécommunications nécessaires sont, dans une large mesure, fixes et indépendants du nombre de réservations effectuées ou de billets émis. En outre, si le fournisseur d'un système informatisé de réservation peut faire augmenter le coût que doivent assumer les compagnies aériennes pour être raccordées à plus d'un système, il pourra induire des économies de gamme au niveau de la demande puisque, en raison des coûts de transfert, ce sont les SIR donnant accès à un nombre plus élevé de vols qui revêtiront la plus grande utilité pour les agents de voyage.

Ces arguments donnent à penser que le marché des SIR (du moins jusqu'à présent) n'est peut-être pas capable de soutenir une concurrence efficace. Borenstein fait ainsi remarquer :

"Les compagnies qui se sont engagées les premières dans l'industrie des SIR, soit American Airlines (Sabre) et United (Apollo), ont attiré de nombreux agents de voyage avant qu'il n'existe des SIR concurrents largement accessibles. Les compagnies arrivées ultérieurement n'ont jamais réalisé de pénétration significative du marché, si ce n'est dans quelques régions où les compagnies propriétaires des SIR possèdent une large part des vols et du trafic. Ces dernières années, Sabre et Apollo ont été accusés de tenter d'obliger les agents de voyage à utiliser exclusivement leurs services, au moyen de diverses obligations contractuelles : l'indemnisation réclamée aux agents qui décidaient de changer de système était disproportionnée par rapport aux coûts réels que le changement occasionnait; l'accès au "programme de super-commissions des agents de voyage" d'une compagnie aurait été illégalement lié à l'utilisation de son SIR ; en outre,

les clauses relatives à l'utilisation minimale pourraient expliquer que pratiquement tous les agents de voyage n'utilisent que le SIR d'une compagnie aérienne pour toutes leurs réservations. Ces plaintes continuent d'être exprimées, mais elles n'ont pas trouvé encore de confirmation devant les tribunaux⁷¹.

Comme pour tous les services qui sont liés verticalement, le risque que la compagnie aérienne possédant le SIR utilise sa position dominante pour limiter ou empêcher la concurrence entre les compagnies aériennes est un sujet de préoccupation. On s'inquiète notamment de ce qu'une compagnie propriétaire de SIR puisse privilégier, dans l'affichage, ses propres vols par rapport à ceux de ses concurrents. Dans une décision de 1984, le Civil Aeronautics Board a jugé illégale cette "discrimination à l'écran". En 1991, l'OACI a produit un code de conduite énonçant les normes d'accès aux SIR et d'affichage de l'information sur ces systèmes.

Le propriétaire du SIR peut également limiter la concurrence en percevant une commission élevée pour l'"accès" à ce service essentiel (commission perçue pour chaque billet émis au moyen du SIR). "Selon les règles du Civil Aeronautics Board, un SIR doit appliquer les mêmes commissions de réservation à toutes les compagnies aériennes, mais cette règle interdisant la discrimination ne peut influencer sur le prix payé ou le coût assumé par la compagnie propriétaire pour la réservation de ses propres billets"⁷².

Ces problèmes peuvent être en partie résolus par la copropriété (ou la propriété "de club") de ce service essentiel. Dans la pratique, presque tous les SIR existants appartiennent conjointement à plusieurs compagnies aériennes. Cependant, le problème de la discrimination à l'égard des compagnies aériennes qui ne sont pas membres du "club" demeure. "En Europe, bien que les commissions soient dues par toutes les compagnies aériennes participant aux SIR de manière non discriminatoire, de nombreuses compagnies nationales, du fait qu'elles sont en partie propriétaires de systèmes comme Amadeus, récupèrent une grande partie de leurs dépenses sous forme de profits. Selon le Ministère des transports des Etats-Unis, les commissions de réservation par segment sont environ deux fois plus élevées que le coût du service. Leur non-participation au capital des SIR représenterait, pour les petits transporteurs, un désavantage estimé à un pour cent de leurs coûts totaux."⁷³

Le fait d'être propriétaire d'un SIR peut également faciliter d'autres pratiques, telles que les programmes de fidélisation déjà mentionnés. "Les SIR sont devenus un outil essentiel pour l'administration des programmes de super-commissions des agents de voyage. Bien que le jugement de 1984 interdise expressément que ces programmes soient liés à l'utilisation du SIR d'un transporteur, il est presque certain que pareille pratique a toujours cours. En étant propriétaire du SIR utilisé par un agent, il est plus facile, pour une compagnie aérienne, de mettre en œuvre un programme de super-commissions, car la plupart de ces programmes sont fondés sur la part des réservations effectuées par l'agent qui sont destinées à une compagnie aérienne, ce qui exige une information fiable sur les ventes de tous les agents"⁷⁴.

4.3 Effets des fusions et des alliances

Cela est bien établi, les autorités de la concurrence doivent prendre en compte les effets des fusions et des alliances sur tous les marchés dans lesquels les compagnies fusionnées fournissent des services. Une fusion ou une alliance entre deux compagnies qui, collectivement, occupent une position dominante dans ces marchés liés verticalement pourrait avoir une importante incidence sur la concurrence dans les services aériens. En particulier, si cette position dominante se situe au niveau des créneaux ou des portes, de la manutention des bagages, de l'entretien ou de la propriété des SIR, elle risque d'affaiblir la concurrence dans ces marchés et de permettre à la compagnie née de la fusion ou aux compagnies parties à

l'alliance d'abuser de leur position dominante pour limiter la concurrence sur le marché des services aériens.

5. Action en faveur de la concurrence : concurrence et moyens réglementaires

Comme dans les autres secteurs, les dispositions du droit de la concurrence jouent un rôle primordial dans le maintien et le renforcement de la concurrence dans le secteur du transport aérien. Cependant, les autorités de la concurrence disposent en général d'une grande latitude pour imposer des conditions aux opérations qui constitueraient autrement des fusions ou des alliances anticoncurrentielles. Les autorités de la concurrence ont également le pouvoir de décider des recours qui peuvent être invoqués à la suite d'une infraction au droit de la concurrence. Le but de la présente section est de dresser, en s'appuyant sur l'analyse qui précède, une liste de mécanismes susceptibles d'améliorer les conditions de la concurrence dans l'industrie du transport aérien.

Bon nombre de ces moyens peuvent être mis en œuvre dans le cadre d'autres instruments d'action des pouvoirs publics, tels que la réglementation, comme c'est le cas effectivement. De fait, l'une des caractéristiques marquantes de bon nombre des moyens réglementaires de faire respecter le droit de la concurrence qui sont énumérés ci-après est leur analogie avec les approches réglementaires classiques, ce qui pose la question de déterminer dans quelle mesure des contraintes de type réglementaire sont appropriées dans le contexte de la mise en œuvre de la politique de la concurrence.

La concurrence pourrait être protégée et renforcée dans le secteur du transport aérien par les mesures suivantes :

- 1. Supprimer les contrôles réglementaires et/ou abroger les accords internationaux qui limitent ou empêchent l'entrée ou l'expansion des services assurés par les compagnies en place.*

S'agissant en particulier des marchés internationaux, les accords bilatéraux conclus par de nombreux pays continuent de limiter à la fois le nombre et l'identité des compagnies aériennes pouvant desservir une route donnée. Bon nombre de ces accords limitent également le nombre de vols que les compagnies aériennes désignées peuvent assurer ainsi que les aéroports qu'elles peuvent desservir. La concurrence peut par conséquent être renforcée par une plus grande libéralisation aux plans bilatéral et multilatéral.

Les Directives de la CE ont presque complètement libéralisé les services aériens à l'intérieur de l'Europe. En principe, toute compagnie aérienne domiciliée dans un pays de l'UE peut assurer des services aériens n'importe où sur le territoire de l'Union. Cependant, il n'en va pas de même des services extra-européens, qui sont toujours régis par des accords bilatéraux, lesquels, même s'ils ne limitent pas le nombre de dessertes, limitent en revanche presque toujours le régime de propriété des compagnies aériennes pouvant desservir les routes faisant l'objet de ces accords. Il serait par conséquent possible de renforcer encore la concurrence en accordant à toute compagnie aérienne domiciliée sur le territoire de l'UE le traitement d'une compagnie aérienne nationale aux fins de ces accords bilatéraux⁷⁵.

C'est une réforme de ce type qui a été proposée par la CE en ce qui concerne les alliances BA/AA et Lufthansa/SAS/United. Selon la proposition européenne, le Royaume-Uni, l'Allemagne, la Finlande, la Suède et la Norvège devraient dans chaque cas autoriser, pour que l'alliance soit approuvée, "tout transporteur communautaire établi dans l'espace économique européen à exploiter des services directs et indirects entre n'importe quel aéroport de son territoire et des États-Unis, en fixant ses tarifs librement"⁷⁶.

2. *Contrôle de la concentration et démantèlement.*

Le contrôle de la concentration est bien sûr au cœur de l'application du droit de la concurrence. Ainsi que cela a déjà été noté, ce contrôle revêt une importance particulière sur les routes auxquelles les nouveaux entrants ont difficilement accès, telles que les routes qui relient des aéroports-pivots, principal sujet de préoccupation dans plusieurs décisions rendues récemment par les autorités de la concurrence aux Etats-Unis et dans l'UE⁷⁷.

De façon analogue, il peut être approprié dans certaines circonstances d'exiger le démantèlement, surtout si cela crée plusieurs réseaux viables. Cette question s'est posée au Mexique, où à la suite de la crise du peso en 1995, l'Etat a pris le contrôle des deux plus importantes compagnies aériennes, Mexicana et AeroMexico, les regroupant sous une société de holding du nom de Cintra. Il a alors fallu déterminer quelle serait la structure la plus efficace à long terme pour l'industrie. Les autorités mexicaines ont préconisé le démantèlement de ces entreprises avant la privatisation.

3. *Contrôler les programmes de fidélisation afin d'empêcher qu'ils ne créent ou ne renforcent un pouvoir de marché, ou d'en limiter l'efficacité.*

Il a déjà été démontré que les programmes de fidélisation peuvent accroître les avantages que confère à une compagnie aérienne sa position dominante à un aéroport-pivot et permettre de tirer parti d'un accroissement de la taille du réseau. Ces deux effets peuvent être anti-concurrentiels. En effet, en l'absence de programmes de fidélisation, la concurrence s'exercerait davantage de liaison à liaison que de réseau à réseau.

Les autorités de la concurrence peuvent interdire les programmes de fidélisation ou en limiter l'efficacité. La Commission européenne, notamment, a pris des sanctions à l'encontre des programmes de fidélisation des agents de voyage. Dans une affaire impliquant British Airways, elle a établi que la compagnie britannique avait offert aux agents de voyage des super-commissions s'ils parvenaient à vendre au moins autant de billets British Airways que l'année précédente. «La Commission a jugé que cette pratique permettait à British Airways de s'assurer la loyauté des agents de voyage, dissuadait ces derniers de vendre leurs services à d'autres compagnies aériennes, et érigeait une barrière illégale pour les compagnies souhaitant faire concurrence à British Airways sur les marchés du transport aérien du Royaume-Uni⁷⁸. La Commission a également dégagé un ensemble de principes destinés à guider les autres compagnies aériennes dans des situations analogues. Elle a ainsi déterminé :

«Que les programmes de remise de fidélité ne sont pas fondés sur des critères économiques mais constituent un abus de position dominante à des fins d'exclusion, systématiquement condamné par la Commission. Il est en effet établi dans le droit communautaire qu'un fournisseur dominant ne peut user de pratiques visant à s'assurer la loyauté de sa clientèle ou de ses distributeurs, et de saisir ainsi le marché de ses concurrents⁷⁹».

Si les programmes de fidélisation des agents de voyage peuvent être anticoncurrentiels, la logique voudrait que les programmes de fidélisation des voyageurs le soient également. La concurrence dans le secteur du transport aérien pourrait vraisemblablement être renforcée par une suppression graduelle des programmes de fidélisation des voyageurs. Sans aller jusqu'à l'interdiction pure et simple, on pourrait envisager d'obliger les compagnies dominantes à autoriser leurs concurrents à participer à leurs programmes de fidélisation, ce qui enlèverait aux compagnies dominantes tout avantage concurrentiel.

Des contrôles de ce type ont été proposés par la CE dans le cas des fusions BA/AA et Lufthansa/SAS/United. La Commission a donné aux compagnies concernées le choix entre maintenir des programmes de fidélisation distincts, ce qui devait avoir essentiellement pour effet de limiter l'intérêt des deux programmes, et autoriser les autres compagnies concurrentes à adhérer au programme⁸⁰.

La CE a également proposé dans ces affaires que d'autres formes de programmes de fidélisation soient expressément interdites. Elle a ainsi exigé, dans l'affaire AA/BA, que "la politique commune de British Airways et de American Airlines à l'égard des agents de voyage établis ou exerçant leurs activités au Royaume-Uni ne comprenne pas de système de rémunération ayant pour objet ou effet d'assurer la loyauté des agents de voyage aux membres de l'alliance sur les marchés concernés. La rémunération accordée par l'alliance aux agents de voyage doit en particulier exclure tout élément lié à un système de seuil de ventes. Les conditions tarifaires offertes aux gros clients établis ou achetant des services de transport au Royaume-Uni devraient être liées au chiffre d'affaires annuel réalisé sur les marchés correspondants, sans système de seuils ni système qui récompense directement ou indirectement la loyauté."⁸¹

4. *Accroître la capacité des services aéroportuaires (créneaux, portes, services d'escale et installations de maintenance) en levant les contraintes réglementaires qui limitent l'expansion des services aéroportuaires et en renforçant les mesures incitant les aéroports à accroître leur capacité.*

L'entrée sur une route donnée ne sera pas possible si les installations aéroportuaires ne sont pas disponibles aux deux extrémités de la route. C'est pourquoi l'un des éléments clés d'une stratégie de renforcement de la concurrence, en particulier à certains aéroports, est de prendre des mesures pour accroître la capacité disponible, que ce soit en autorisant les compagnies à construire de nouveaux aéroports ou de nouvelles installations aux aéroports existants. L'étude récente du Transportation Research Board des Etats-Unis sur la concurrence entre compagnies aériennes comprend d'importantes recommandations visant à accroître la capacité aéroportuaire et à assurer une utilisation plus efficace de la capacité existante⁸². On peut concevoir que l'expansion des services aéroportuaires soit l'une des conditions d'approbation d'une fusion ou d'une alliance.

5. *Contrôler la capacité d'une compagnie aérienne de s'approprier une position dominante sur le marché des créneaux, portes, services d'escale ou maintenance et/ou l'obliger à se dessaisir d'une position dominante sur le marché et/ou limiter sa capacité d'utiliser cette position dominante pour limiter la concurrence.*

Lorsqu'il est impossible d'accroître la capacité, il va de soi qu'il importe de veiller à ce qu'une compagnie en place ne s'approprie pas une position dominante au plan des installations aéroportuaires, ou alors, il faudra envisager des politiques exigeant le désengagement de cette compagnie ou d'autres mesures qui garantiront que les installations seront accessibles aux compagnies aériennes rivales selon des conditions non discriminatoires.

Par exemple, dans les affaires BA/AA et Lufthansa/SAS/United, la CE a proposé que les compagnies concernées soient obligées de céder un grand nombre de créneaux à leurs concurrents souhaitant offrir des services entre les Etats-Unis et Londres, qui étaient dans l'impossibilité d'obtenir des créneaux par les voies normales d'attribution. Dans les deux cas, la CE a proposé que dans le cadre d'un dessaisissement obligatoire en une seule fois, les compagnies parties à la fusion soient obligées de céder des créneaux et des installations

(aux deux extrémités) à la demande des concurrents, jusqu'à ce que ceux-ci assurent au moins 55 pour cent du total des dessertes reliant les deux aéroports-pivots en question.

Au Japon, il n'existe actuellement pas d'installations de soutien indépendantes, ce qui confère aux compagnies en place (Japan Airlines et All Nippon Airways) une position dominante dans le marché des services de maintenance. Selon des articles parus dans la presse, ANA et JAL, face à la concurrence de deux nouveaux entrants, Skymark Airlines et Air Do, menacent de hausser les tarifs de maintenance et de refuser le service aux appareils supplémentaires que Skymark et Air Do envisagent de mettre en service l'an prochain⁸³.

6. *Contrôler la capacité d'une compagnie aérienne de s'approprier une position dominante en ce qui concerne les SIR, ou d'utiliser le fait qu'elle en soit propriétaire ou l'influence qu'elle exerce sur un SIR pour limiter la concurrence, ou l'obliger à se dessaisir d'un SIR.*

Comme cela a déjà été mentionné, une décision rendue par le Civil Aeronautics Board des Etats-Unis en 1984 ainsi qu'un code de conduite publié par l'OACI en 1991 empêchent les compagnies aériennes propriétaires de SIR de privilégier leurs propres vols dans l'affichage. En principe, l'approbation des fusions pourrait être subordonnée à l'ouverture des SIR à la participation d'autres compagnies aériennes.

7. *Contrôler la capacité d'une compagnie d'accroître son offre pour faire face à la concurrence et contrôler la capacité d'une entreprise dominante de limiter son offre pour faire augmenter les tarifs.*

Les prix et les niveaux d'offre deviennent préoccupants lorsque les prix sont "trop bas" (et peuvent par conséquent être des prix d'éviction) ou "trop élevés" (pouvant être alors liés à l'exercice d'un pouvoir de marché). Les préoccupations relatives à la tarification prédatrice sont certes prises en compte dans l'application du droit de la concurrence, mais parfois aussi par des mesures réglementaires telles que la fixation de prix plancher, la limitation de l'accroissement de l'offre pour réagir aux nouveaux entrants, ou encore des restrictions visant la hausse des tarifs après la sortie d'un concurrent.

Par exemple, dans l'examen de l'alliance Lufthansa/SAS, la CE a approuvé l'alliance sous réserve que les compagnies "gèlent le nombre de fréquences quotidiennes sur une route lorsqu'un nouvel entrant s'y présente. Cette condition vise à éviter que les compagnies déjà présentes sur la route n'accroissent sensiblement leurs fréquences de vol en vue d'évincer le nouvel entrant. Lufthansa et SAS doivent néanmoins être autorisées à conserver le degré de souplesse nécessaire pour exploiter leurs services : si un nouveau concurrent fait son apparition sur une route, elles doivent être en mesure d'accroître le nombre de vols quotidiens sur la route en question"⁸⁴.

Les questions relatives à la tarification monopolistique sont en général prises en compte par la réglementation mais, parfois aussi, là encore, par des mécanismes concurrentiels qui imposent un prix plafond ou une capacité plancher en deçà de laquelle l'entreprise dominante ne pourra pas réduire sa capacité.

Par exemple, dans l'examen de l'alliance entre Qantas et British Airways, la Commission australienne de la concurrence et de la protection des consommateurs a imposé un prix plafond, en exigeant que les recettes nettes par passager n'augmentent pas en termes réels au cours d'une période de trois ans. En outre, la Commission a imposé un plancher pour la capacité de fret disponible en exigeant que "pendant la période comprise entre le 1er avril

1995 et le 31 mars 2000, la capacité globale moyenne de fret disponible par semaine entre l'Australie et le Royaume-Uni sur les vols de l'hémisphère est ne soit pas inférieure à 100 tonnes⁸⁵.

6. Conclusion

Les modalités suivant lesquelles s'exerce la concurrence dans le secteur aérien à la suite de la déréglementation et de la libéralisation sont loin d'être parfaites. Bien que relativement peu d'obstacles s'opposent à la mise en place de services nouveaux, les avantages retirés des économies de gamme paraissent importants. On observe une nette tendance en vertu de laquelle les aéroports-pivots sont dominés par des compagnies uniques et les routes radiales par les compagnies en place. Notamment, il est très difficile de créer des services sur les routes radiales et sur les liaisons entre aéroports-pivots.

Des facteurs importants jouent en faveur de la concentration. Sous l'effet des économies d'échelle et de gamme, stimulées par les stratégies d'augmentation de la demande et de réduction des coûts, les grands réseaux ont un avantage concurrentiel sur les petits. A l'échelle internationale, où les restrictions réglementaires font obstacle aux regroupements, la tendance à la concentration est mise en évidence par le développement des alliances multinationales et notamment par la constitution de quatre grandes super-alliances.

Malgré des progrès substantiels en matière de libéralisation à l'échelon national dans de nombreux pays, beaucoup de services aériens internationaux sont encore régis par une myriade d'accords bilatéraux qui limitent directement leur nombre et leur qualité. En outre, dans de nombreux aéroports, la pénurie de créneaux entrave la création de nouveaux services et le renforcement des services existants.

Dans ces circonstances, la concurrence entre compagnies aériennes reste menacée. A cet égard, la tendance à la concentration constitue un danger potentiel. Si certaines fusions et alliances bénéficient de manière substantielle aux consommateurs, elles sont susceptibles de restreindre considérablement la concurrence, en particulier sur les itinéraires normalement desservis par plusieurs compagnies et tout spécialement sur les liaisons entre aéroports-pivots. Il convient d'accorder une attention particulière aux mesures susceptibles de limiter l'efficacité des programmes de fidélisation. De même, il serait bon, pour atténuer les effets des fusions et des alliances, d'assouplir les réglementations qui font obstacle à l'entrée ou au développement et restreignent la capacité des aéroports.

7. Annexe

7.1 *Contraintes liées à l'attribution des créneaux*

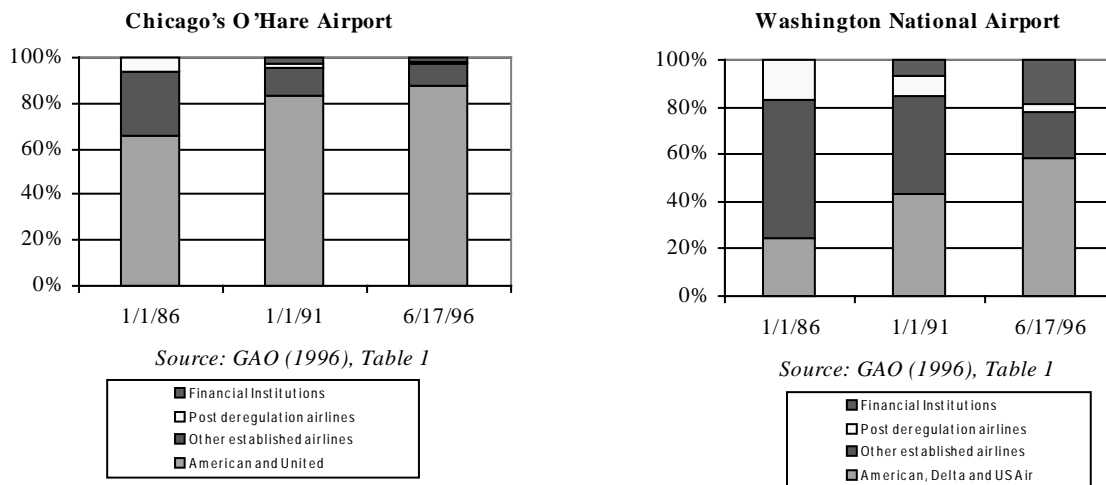
Les créneaux de décollage et d'atterrissage, c'est-à-dire le droit de décoller et d'atterrir à une certaine heure et certains jours, font l'objet d'une attention particulière. Les impératifs du contrôle aérien et la capacité des pistes limitent le nombre de mouvements d'aéronefs par heure. De nombreux aéroports ont déjà atteint le maximum possible, au moins à certains moments de la journée ou de l'année. Fin 1997, on dénombrait 132 aéroports internationaux coordonnés, dont 118 tout au long de l'année et 14 pendant la période de pointe estivale⁸⁶. En termes de politique publique, le problème consiste à définir un système d'attribution des créneaux efficace, ainsi que des incitations en faveur d'un accroissement rationnel de la capacité des aéroports, dès lors qu'il est envisageable.

Deux types de mécanismes peuvent être envisagés aux fins d'affectation des ressources lorsqu'elles sont rares. Dans le premier, le prix est déterminé et la quantité vendue est fonction des forces du marché ; dans le second, c'est la quantité disponible qui est fixe, le prix étant fonction des forces du marché. En présence d'un volume intangible, comme dans le cas des créneaux horaires dans les aéroports coordonnés, il est en général plus rationnel de déterminer une quantité disponible totale fixe, puis de recourir à des mécanismes de marché pour attribuer les créneaux aux compagnies aériennes (enchères ou appels d'offres, par exemple). Si le rationnement s'effectue sur la base du prix, la détermination de celui-ci doit, pour donner des résultats satisfaisants, tenir compte des périodes de pointe (les redevances d'atterrissage et de décollage étant alors plus élevées aux heures de pointe). Aux États-Unis, notamment, il est rarement fait appel à ces mécanismes⁸⁷.

Chacune de ces approches ouvre la porte aux pratiques anticoncurrentielles. Conformément à une règle qui vaut pour tous les secteurs économiques, les entreprises dominantes seraient prêtes à payer davantage que leurs rivales pour obtenir des créneaux porteurs. Dans certains pays, les règles de concurrence empêchent l'acquisition ou le renforcement d'une position dominante individuelle ou collective favorisant l'obtention des créneaux, afin que cela ne puisse pas se produire.

Aux États-Unis, depuis la mise en place des échanges de créneaux dans les aéroports coordonnés, les compagnies aériennes en place dominantes ont réussi à accroître le pourcentage de créneaux qu'elles détiennent en dépit des mesures expressément conçues pour que les entrants obtiennent des débouchés. Le graphique ci-après illustre l'évolution de l'affectation des créneaux à Chicago O'Hare et à Washington National.

Figure 5. : Évolution de l'affectation des créneaux à Chicago O'Hare et à Washington National



Diverses mesures ont été proposées, aux États-Unis, dans le but d'empêcher certaines compagnies aériennes d'accaparer les créneaux. Elles prévoient des mécanismes permettant de récupérer une partie de ceux qui sont détenus par des transporteurs en place et de les réaffecter aux entrants. Ainsi, en vertu de la règle dite "use it or lose it", la FAA peut retirer un créneau à une compagnie dès lors qu'elle l'utilise à moins de 80 pour cent. D'autres propositions vont encore plus loin. Par exemple, les autorités aéroportuaires de New York et du New Jersey sont partisans de "retirer quelques créneaux aux compagnies (trois pour cent au maximum sur une base annuelle) afin de les réattribuer par tirage au sort aux entrants et aux petits transporteurs en place"⁸⁸.

En 1994, l'organisme italien chargé de veiller sur la concurrence a considéré qu'Alitalia abusait de sa position dominante pour faire de la rétention de créneaux. Il a ainsi estimé que la compagnie programmait des vols qu'elle annulait régulièrement, afin de conserver des créneaux qui, en d'autres circonstances, auraient pu être attribués à des concurrents. Seuls quelques-uns de ces vols avaient été annulés à cause des conditions météorologiques ou pour des raisons n'ayant pas trait à la politique d'exploitation d'Alitalia. De plus, en 1996, l'organe de supervision de la concurrence a diligenté une enquête en vue de déterminer si Alitalia, dans sa fonction de coordinatrice de l'attribution des créneaux dans tous les aéroports d'Italie, tentait de faire obstacle à l'entrée de nouvelles rivales pour conserver ou renforcer sa propre position sur le marché intérieur. Alitalia a renoncé à son rôle de coordinatrice au cours de cette enquête⁸⁹.

Dans les systèmes où la quantité totale de créneaux disponibles est plafonnée, le nombre maximum fixé a des effets sur la concurrence. Les compagnies dominantes en place sont fortement incitées à limiter ce nombre total. Dans bien des cas, notamment par le passé, elles jouaient un rôle majeur dans la détermination du nombre de créneaux et dans leur attribution. Il n'est pas du tout exclu qu'elles exercent cette influence de telle manière que la concurrence en pâtisse.

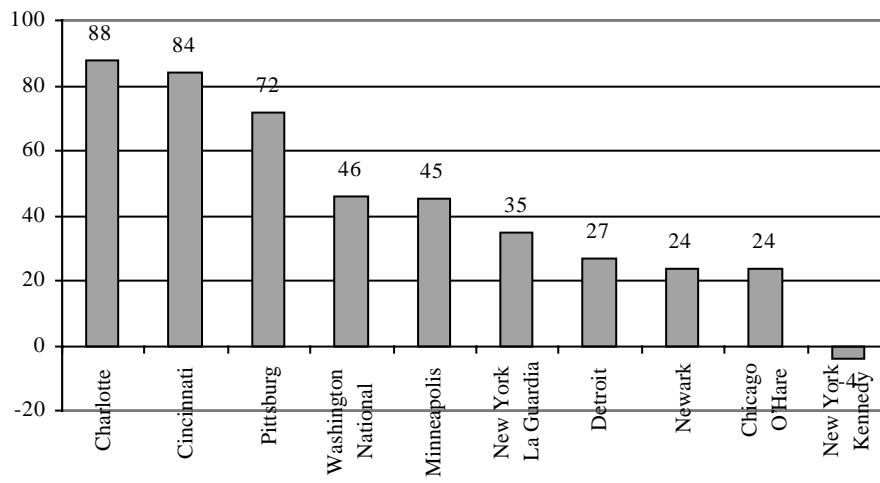
7.2 *Contraintes liées à l'attribution des portes*

Les problèmes découlant de l'attribution des portes sont encore plus courants que ceux qui sont liés à l'affectation des créneaux de décollage et d'atterrissage. D'après une étude réalisée en 1990 par le General Accounting Office (GAO, États-Unis), 85 pour cent des portes des 66 plus grands aéroports américains étaient loués aux compagnies aériennes en place dans le cadre de contrat d'exclusivité à long terme. Dans six aéroports américains, les difficultés d'obtention de portes constituent un obstacle important à l'entrée :

Aéroport	Proportion de portes sous licences exclusives
Charlotte	90%
Cincinnati	100%
Detroit	88%
Minneapolis	100%
Newark	84%
Pittsburgh	88%

Il ressort de certaines données économiques que la saturation des créneaux et des portes disponibles donne directement lieu à un pouvoir de marché. La FAA classe 43 aéroports dans la catégorie des "grands pivots". Les prix sont globalement plus élevés dans les dix d'entre eux qui connaissent des problèmes de capacité. En moyenne, les tarifs des vols au départ de ces aéroports, corrigés des distances parcourues, sont 31 pour cent plus élevés que dans les 33 autres.

Figure 6. : Écart de prix moyens avec les 33 autres aéroports



Source: GAO (1996), Figure 2

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NOTES

1. The Economist, "Airline alliances. Mergers in mind", 26 septembre 1998. Parmi ces alliances, les plus abouties couvrent tous les aspects de l'activité et supposent notamment : le partage de codes ; l'harmonisation des services entre réseaux, de l'affectation des produits d'exploitation, de la promotion et de la commercialisation, et des relations avec les agences de voyage ; la coordination des services d'escale et des programmes de fidélisation ; la centralisation des achats ; la mise sur pied d'entreprises conjointes ; et la restructuration des services techniques et du transport de fret. Il est souvent très difficile de distinguer ces rapprochements de fusions à part entière. Les entreprises qui en sont issues fonctionnent de la même manière qu'une seule et même société intégrée.
2. Ainsi, selon certains, la vidéoconférence remplace avantageusement les déplacements physiques pour affaires. On lit dans The Economist : "[D'après une enquête de l'AITA,] 94 pour cent des voyageurs d'affaires considèrent que les voyages en avion sont indispensables à l'exercice de leur métier, mais la moitié d'entre eux pense que les progrès des télécommunications pourraient leur éviter une partie de leurs déplacements. (...) Les voyages inutiles font perdre énormément de temps. Pour certaines entreprises, il suffit qu'un membre de l'équipe se déplace et que les autres participent aux réunions depuis une salle de vidéoconférence. C'est la formule qu'a adoptée Saturn, nouveau constructeur automobile filiale de General Motors. Cette entreprise estime économiser 500 000 dollars par an sur son budget billets d'avion depuis qu'elle a installé une liaison de vidéoconférence entre son usine de Spring Hill, dans le Tennessee, et ses bureaux de Détroit", The Economist, 1993, p. 8.
3. "Sur courte distance, il est parfois plus rapide de voyager en train à grande vitesse, à 300 kilomètres/heure ou plus, que de prendre l'avion. En France, le TGV a d'ores et déjà ravi une partie de leur clientèle aux compagnies aériennes. (...) La liaison ferroviaire qui empruntera le tunnel sous la Manche déléstera d'un très grand nombre de passagers les vols Londres-Paris, l'une des routes aériennes les plus fréquentées du monde", The Economist, 1993, p. 8. Une question reste néanmoins posée : le TGV constituerait-il une solution de rechange viable en l'absence de subventions publiques conséquentes ?
4. Un voyageur qui habite entre deux villes ne privilégie pas nécessairement l'un des deux aéroports desservant chacune d'elles. Par ailleurs, une seule et même ville peut être desservie par plusieurs aéroports offrant chacun des avantages différents du point de vue des voyageurs.
5. Le ministère de la Justice des États-Unis relève : "Certains passagers recherchent des vols sans escale et d'autres des vols avec correspondance. Outre cette distinction, le partage du marché sur les routes reliant les États-Unis et Londres est aussi déterminé par l'aéroport londonien que privilégient les voyageurs. Les passagers pressés qui se déplacent pour affaires préfèrent à une majorité écrasante Heathrow à Gatwick". Ministère de la Justice des États-Unis, 1998.
6. "Il ressort des enquêtes que pour une catégorie bien définie de voyageurs d'affaires sensibles au facteur temps, les services avec escale ne remplacent pas avantageusement les services sans escale. Ces voyageurs continueraient d'emprunter des vols sans escale même si leur prix augmentait. Les compagnies aériennes peuvent leur appliquer des tarifs différents de ceux qu'elles proposent aux voyageurs d'agrément. De plus, elles assortissent en l'occurrence les billets de restrictions et de conditions particulières." ministère de la Justice des États-Unis, 1998.
7. "L'existence d'un marché distinct pour les services sans escale est corroborée par des études économétriques récentes qui montrent que les voyageurs sensibles au facteur temps ont une nette préférence pour les vols de ce type, au détriment des trajets avec escale." Voir Berry, Carnall et Spiller, 1996.
8. The Economist, 1999, p. 68.
9. S'agissant de la réglementation applicable au transport aérien de fret, voir OCDE, 1999. Les États-Unis ont été le premier grand pays, dès 1978, à libéraliser son secteur aérien national. Avant cette date, pratiquement

toutes les compagnies aériennes faisaient l'objet de restrictions réglementaires. "La loi de déréglementation du secteur aérien (...) de 1978 se traduit par la suppression progressive (...) du contrôle des prix et de l'entrée dans les trois à cinq ans qui suivent. Le Civil Aeronautics Board (CAB) contrôle jusqu'en 1981 l'attribution des routes aux compagnies, mais aux termes de la loi, c'est aux transporteurs en place qu'il incombe d'apporter la preuve que l'arrivée de nouveaux concurrents porte atteinte à l'intérêt général. Au cours de la même période, les compagnies existantes peuvent exploiter une nouvelle route par an sans l'approbation du CAB et chacune d'elles est autorisée à protéger une route de l'entrée de ses concurrentes. A compter du 1er janvier 1982, outre la procédure habituelle de certification, l'entrée des compagnies sur une nouvelle route n'est plus soumise à aucune restriction. Au cours des quatre années qui suivent la déréglementation, la loi accorde aux compagnies une relative liberté en matière de prix : les tarifs peuvent se situer cinq pour cent au-dessus du 'niveau moyen des prix pratiqués dans le secteur' ou 50 pour cent au-dessous, sans autorisation préalable du CAB. Il est mis fin au contrôle des prix par le CAB à compter du 1er janvier 1983 et cet organisme est supprimé le 1er janvier 1985." Evans et Kessides, 1992.

10. OACI, 1998.
11. Voir GAO, 1998, p. 4.
12. Voir Van Miert, 1998.
13. Cette formule relève de la "sixième liberté" (la possibilité de transporter des passagers depuis un premier pays tiers vers un deuxième pays tiers, avec une escale dans le pays de la compagnie).
14. Cette formule relève de la "cinquième liberté" (la possibilité de transporter des passagers depuis un premier pays tiers vers un deuxième pays tiers sur un itinéraire qui a son origine dans le pays de la compagnie).
15. The Economist, 1999, p. 68.
16. LANChile s'est déclarée prête à reconduire ses accords de partage de codes avec Aeromexico et Varig, alors même que cette dernière est membre d'une alliance concurrente.
17. The Economist, 1999, p. 67.
18. "Star ne compte pas moins de 24 comités chargés de questions aussi diverses que les correspondances entre les réseaux, les achats et les relations avec la clientèle. Leurs présidences sont réparties de manière à ne froisser personne. Aux yeux des intéressés, même Airbus Industrie passe pour un modèle d'organisation industrielle en regard de cette structure." The Economist, "Airlines alliances. Mergers in mind", 26 septembre 1998.
19. The Economist, "Flying in formation: airlines alliances", 22 juillet 1995.
20. Financial Times, "Treaty wings to success", 9 septembre 1999.
21. Transportation Research Board, 1999, p. E-3.
22. Economist, "One world, few airlines", 26 septembre 1998.
23. Lorsque les entreprises peuvent choisir le degré de différenciation de leurs produits, ces effets peuvent être renforcés si les entreprises choisissent de différencier leurs produits de façon assez fine pour que la demande sur chaque marché de produits soit limitée au point de ne permettre le maintien que d'une seule entreprise.
24. Caves (1992) et Eads, Nerlove et Raduchel (1969), mais voir Liu et Lynk (1999).

25. Borenstein (1992), pp. 49 et 50.
26. Un autre coût du système en étoile est qu'il tend à entraîner une grande variabilité dans l'utilisation des aéroports (de nombreux vols sont programmés pour arriver et partir au même moment) ce qui conduit à des excédents de capacité moyens plus élevés dans les aéroports.
27. Il existe deux autres sources d'économies de gamme qu'il importe de mentionner. La première est qu'il existe manifestement des économies d'échelle associées à la desserte dans les deux sens d'une liaison donnée, faute de quoi l'appareil devrait revenir à vide. De la même manière, comme il n'est pas possible de louer des avions sur de très courtes périodes, la capacité de maintenir à un niveau élevé le coefficient d'utilisation d'un appareil est un aspect important d'une gestion efficace d'une compagnie aérienne. En conséquence, du moins pour les compagnies très petites, il est possible de réaliser des économies d'échelle et des économies de gamme en exploitant des liaisons qui garantissent que l'appareil est utilisé en continu tout au long de la journée.
28. Borenstein (1992), page 57.
29. Liu et Lynk (1999), p. 1090. Comme on peut l'escompter avec cette théorie, après la déréglementation aux Etats-Unis et dans l'Union européenne, de nombreuses compagnies ont conclu des alliances avec d'autres compagnies régionales et locales. Ces alliances ont par la suite débouché sur une intégration entre compagnies. "Au début de la déréglementation, de nombreuses compagnies locales ont accepté de fonctionner en coordination avec une grande compagnie aérienne et sous le nom de celle-ci. Ces accords de 'partage de code' signifiaient que les vols de la compagnie régionale seraient programmés pour assurer la correspondance avec ceux de la grande compagnie aérienne et qu'ils seraient répertoriés dans les systèmes de réservation informatiques sous le code de la grande compagnie. A la fin des années 80, ces accords ont souvent été remplacés par une intégration verticale". Borenstein (1992), page 59.
30. Dans de nombreuses industries, le fait d'obtenir des services simultanément de deux entreprises ou plus entraîne des coûts. Ainsi, le coût de la possession d'un raccordement par le réseau fixe à deux ou plusieurs réseaux de télécommunications indépendants est suffisamment élevé pour que la plupart des personnes ne souhaitent conserver qu'un seul raccordement de ce type. Comme un réseau présente d'autant plus d'intérêt que le nombre des personnes qu'il permet d'atteindre est grand, les consommateurs sont prêts à payer plus pour être raccordés aux réseaux les plus grands. De la même manière, étant donné l'investissement en capital humain nécessaire pour comprendre un système d'exploitation, la plupart des utilisateurs d'ordinateurs personnels ne souhaitent apprendre à se servir que d'un seul système. Comme l'éventail des logiciels disponibles est plus grand pour les systèmes d'exploitation les plus populaires, les consommateurs sont prêts à payer davantage pour apprendre à utiliser les systèmes les plus populaires.
31. Borenstein (1992), page 62.
32. Selon le ministère de la Justice des Etats-Unis, "il est largement admis que les programmes grands voyageurs d'une compagnie aérienne sont d'autant plus intéressants que celle-ci augmente sa présence dans une ville". Voir Borenstein (1992), page 62 et Levine (1987), page 454.
33. Levine (1987).
34. GAO (1990b).
35. Borenstein (1992), page 62.
36. Levine (1987), Borenstein (1991).
37. Borenstein (1992), page 62. Pour illustrer les effets de ces programmes d'incitation, prenons l'exemple suivant. Supposons qu'un transporteur établi vende normalement 5 000 billets à 100 dollars chacun par l'intermédiaire d'une agence donnée. Supposons que la compagnie établie utilise un programme d'incitation

dans lequel elle offre à l'agence une commission de 12 pour cent sur tous les billets vendus si l'agence vend 5 000 billets ou plus, et dix pour cent dans le cas contraire. Dans ces conditions, la commission de l'agence sera de 12 pour cent 5 000 fois 100 dollars, soit 60 000 dollars. Supposons maintenant qu'un nouveau transporteur se lance sur le marché de cette ville en espérant attirer dix pour cent de l'activité totale. Dans ce cas l'agence de voyage, si elle faisait la promotion de la compagnie concurrente, devrait vendre 4 500 billets de la compagnie établie et 500 de la compagnie concurrente. La commission qu'elle perçoit de la compagnie établie est maintenant de dix pour cent 4 500 fois 100 dollars, soit 45 000 dollars. Ce qui représente un manque à gagner de 15 000 dollars en commission, que doit compenser le concurrent. Le concurrent doit offrir à l'agence une commission de 30 pour cent s'il veut inciter l'agence à promouvoir la vente de ses billets (15 000 dollars représentent 30 pour cent de 500 fois 100 dollars).

38. GAO (1996), page 17.

39. GAO (1996), page 16.

40. "Préoccupé des effets possibles des supercommissions sur la concurrence, le ministère de la Justice des Etats-Unis a ouvert une enquête en 1994 pour déterminer si leur utilisation constituait une violation antitrust – du fait soit de la monopolisation du marché correspondant soit d'ententes pour une restriction excessive des échanges. Dans le cadre de son enquête, le Ministère de la justice a recueilli des données concernant l'ensemble de l'industrie sur les réservations aériennes et les versements de supercommissions. Toutefois, l'analyse des données effectuée par le Ministère n'a pas permis de montrer que les opérateurs dominants avaient pu utiliser ces systèmes de supercommissions pour pénaliser les transporteurs plus petits ou empêcher l'entrée de nouveaux concurrents sur les marchés des lignes intérieures. Le ministère de la Justice a donc clos son enquête antitrust en octobre 1996". GAO (1996), page 15.

41. USDoJ (1998), page 11.

42. USDoJ (1998), page 12.

43. Evans et Kessides (1992), page 463.

44. Borenstein (1989), GAO (1990a), DOT (1990), Berry (1990b), Abramowitz et Brown (1990), Evans et Kessides (1992).

45. Borenstein (1992), page 55. "L'une des explications les plus plausibles de ce résultat réside dans l'avantage en termes de pouvoir de marché et de fidélité de la clientèle dont une compagnie dominante au plan local peut bénéficier avec l'utilisation de programmes grands voyageurs et de programmes de supercommission des agents de voyages. Un élément corroborant cette théorie est que le transporteur dominant sur un aéroport de regroupement pratique des tarifs moyens plus élevés sur les routes à destination et en provenance de l'aéroport que d'autres compagnies desservant les mêmes routes. En contrôlant les prix et la qualité du service, le transporteur dominant sur un aéroport attire une part plus que proportionnelle de passagers au départ de cet aéroport, l'avantage étant particulièrement marqué sur les routes destinées à la clientèle d'affaires. ... on peut supposer qu'une compagnie en position dominante retire des programmes grands voyageurs plus d'avantages en termes d'attraction de clientèle avec les voyageurs d'affaires qu'avec les autres catégories". Borenstein (1992), page 55-56.

46. Evans et Kessides (1992), page 463.

47. Borenstein (1992), page 54-55.

48. *USA v Northwest Airlines and Continental Airlines*, Civil Action No. 98-74611.

49. "Ainsi, un touriste qui part d'Allemagne peut passer par Francfort, Amsterdam, Paris, Bruxelles ou Londres. Les chiffres fournis par les compagnies démontrent de fait qu'un nombre appréciable de passagers allemands choisissent effectivement des vols qui transitent par un aéroport situé dans un autre Etat

membre. Cela signifie que pour les passagers qui ne sont pas pressés par le temps, il existe une concurrence entre réseaux", Van Miert (1998).

50. Voir Morrison et Winston (1987), Borenstein (1989), Brueckner, Dyer et Spiller (1990).
51. Voir Stiglitz (1987).
52. Borenstein (1992), page 53.
53. "Les actions intentées pour prédation que [le Ministère de la justice des Etats-Unis] juge les plus crédibles concernent non seulement des réductions de prix, mais également une expansion importante de la capacité des transporteurs en place. Il est à présumer que les horaires suivis par le transporteur en place avant l'entrée du nouveau concurrent sont optimaux pour assurer une exploitation efficace de son réseau. Si le réseau en place est optimal, le coût supplémentaire de l'acheminement d'un passager supplémentaire peut être plutôt faible. Par conséquent, en l'absence d'autres motifs plausibles de soupçon, il ne sera vraisemblablement pas donné suite à une plainte pour comportement prédateur lorsque le transporteur en place n'a apporté que quelques modifications, sinon aucune, à l'exploitation de son réseau après l'arrivée du nouveau concurrent, même s'il baisse ses tarifs de façon sensible." Fones (1997).
54. En revanche, l'entrant sera peut-être capable de survivre si ses coûts sont sensiblement plus bas ou s'il peut différencier son offre d'une façon ou d'une autre, par exemple en proposant son service à partir et à destination d'un aéroport voisin.
55. Voir Hendricks, Piccione et Tan (1997).
56. Starkie (1999), page 282.
57. Voir Transportation Research Board (1999), page E-6 ainsi que l'enquête dans Starkie (1999).
58. Voir Starkie (1999).
59. Un autre facteur qui intervient est le degré relativement élevé d'homogénéité du produit.
60. Borenstein (1992), page 65.
61. Voir Nomani (1990).
62. Borenstein (1992), page 65.
63. Voir par exemple Bernheim et Whinston (1990). Voir également la note de référence sur la table ronde que l'OCDE a consacrée à la collusion tacite, OCDE (1999b).
64. Kim et Singal (1993), pages 565-566.
65. Notamment l'élimination de toute double marginalisation le cas échéant.
66. Voir Kim et Singal (1993). En revanche, une fusion avec une entreprise en déclin entraîne une augmentation des tarifs de 40 pour cent en moyenne.
67. Et de 40 pour cent dans le cas d'une fusion avec une entreprise en déclin.
68. Voir Heimler (1999).

69. Voir *Rapport annuel sur l'évolution en matière de politique de la concurrence aux Etats-Unis*, DAF/CLP(99)14/7, paragraphe 109.
70. Borenstein (1992), page 51.
71. Borenstein (1992), pages 63-64.
72. Borenstein (1992), page 65.
73. OCDE (1997), page 73.
74. Borenstein (1992), page 64.
75. L'ancien membre de la Commission européenne chargée de la concurrence, Karel Van Miert, a fait valoir que le système actuel d'accords bilatéraux de type ciel ouvert en Europe va à l'encontre du principe fondamental du marché unique et devrait être remplacé par un accord de ciel ouvert entre l'UE et les Etats-Unis.
76. CE (1998a), paragraphe 29, CE (1998b), paragraphe 25.
77. CE (1998a).
78. Antitrust and Trade Regulation Report, Vol. 77, no. 1919, p. 120.
79. Antitrust and Trade Regulation Report, Vol. 77, no. 1919, p. 120.
80. Voir CE (1998), paragraphe 19.
81. Voir CE (1998), paragraphe 21.
82. Transportation Research Board (1999), page E-8.
83. "Big Japanese Airlines Take on Newcomers: Incumbents Slash Fares At Expense of Profits", Wall Street Journal Europe, 3 juin 1999, p. 5.
84. CE (1996), paragraphe 92.
85. Voir Australian Competition and Consumer Commission (1995), page 85.
86. OACI, 1998.
87. "Dans les aéroports saturés, il serait envisageable de fixer le montant des redevances d'atterrissage en fonction de l'encombrement des pistes. En l'occurrence, elles augmenteraient aux moments où la demande culmine. (...) A ce jour, ce système de tarification s'est opposé à des résistances, notamment de la part des exploitants du domaine de l'aviation générale, et il n'a pas été mis en œuvre. Cependant, la position de la FAA ayant évolué, la situation pourrait changer. Si ce mécanisme était appliqué, les redevances ne seraient plus directement liées au poids, comme c'est en général le cas actuellement, d'où une augmentation des coûts pour les petits aéronefs commerciaux et l'aviation générale, et une diminution pour les grands appareils. (...) Le système a été expérimenté dans le Massachusetts en 1987, mais les instances judiciaires l'ont jugé 'discriminatoire'". Borenstein, 1992, p. 51.
88. GAO, 1996, p. 7.
89. Voir Heimler, 1999.

SECRETARIAT SUGGESTED QUESTIONS FOR DELEGATES' CONTRIBUTIONS*

The questions are divided into two parts. The first part asks you to provide a brief summary of the key features of the regulatory regime that affect competition in air services. The second part looks at the competition issues that arise in an airline merger case, focusing on the peculiarities of the airline industry. Not every country will have addressed all of these issues. You are invited to answer as many questions as you can.

As an alternative approach, rather than addressing each question in turn, you may wish to present on one or more specific cases that you have handled, bearing the questions below in mind. Of particular but not exclusive interest are cases, which have involved international co-operation between competition authorities.

The economic consequences of a closely specified alliance are often indistinguishable from the economic effects of a merger. As a result, the competition analysis of an alliance is very similar to that for a merger. The questions that follow therefore do not distinguish closely between alliances and mergers. Nevertheless, certain important differences in the implications of each may remain and you are invited to highlight these differences when they arise.

Part I: Summary of The regulatory regime for air services

In many countries the airline industry remains a relatively highly regulated sector. This regulation has an important impact on the scope and patterns of competition. It is important, therefore, to understand the nature of this regulation (especially in international air services) as a background for consideration of merger control. These questions invite you to set out a brief summary of the key features of the regulatory regime for passenger air services.

1. Regulation of licensing and entry

(1.1) What are the regulatory restrictions (if any) on new domestic entry? What licensing requirements exist? Are their limits on the total number of domestic competitors?

(1.2) What restrictions exist on the provision of international services? What restrictions exist on existing airlines in the expansion of international services? What restrictions exist on new entry in international services? Can international airlines provide domestic services (such as "cabotage")?

* These questions are excerpted from pre-roundtable guidance provided to Members to assist in the preparation of their written submissions. They are reprinted here because some of the submissions included in this publication make reference to them.

Regulation of prices and ownership: Application of Competition Law

- (1.3) *Are their limits on the prices or terms of conditions that airlines can offer? Are their restrictions (e.g., for environmental reasons) on the types of planes that can be flown or the types of services that can be offered that might have competition implications? Are there controls on the ownership of airlines? If so, please explain.*
- (1.4) *Are there exemptions or exceptions in the application of competition law to the airline industry (such as an exemption for international air agreements)? If so, please explain. Who has primary responsibility for enforcing competition law in this sector - the competition authority, a sectoral regulator, or some combination? If jurisdiction is shared, how are conflicts resolved?*

Part II: Competition analysis

2. Market definition

- (2.1) *In analysing competition issues in the airline industry, what air transport services markets have you identified? How did you make that determination? Most countries focus on “city-pair” markets, but for cities with more than one airport, these airports may not be viewed as close substitutes from the perspective of travellers - for which cases is it more appropriate to focus on “airport-pair” markets?*
- (2.2) *Airlines typically seek to distinguish between many classes of customers. In your analysis which classes of consumers have you distinguished as separate markets? How did you arrive at that determination? Were your competition concerns focused on a particular class of consumer (such as time-sensitive business travellers?) Did you distinguish non-stop as a separate market from other connecting services?*
- (2.3) *Airlines also seek to lower the elasticity of demand for their services through loyalty programs such as frequent-flyer programs, travel-agent incentive programs, or through direct negotiation with large customers. Are such programs important in your country? Have they materially changed the nature of demand for certain airlines, particularly at “hub” airports?*
- (2.4) *To what extent does inter-modal competition (such as high-speed train service) discipline airline pricing? Does the level of competition (intra-modal or inter-modal) vary in a systematic way with the distance travelled?*

3. Barriers to entry, expansion and exit

- (3.1) *For a given route, are there barriers or restrictions that prevent an expansion of services by existing carriers (such as constraints on the availability of take-off and landing slots)? In the case of international routes, do international agreements prevent an expansion in services by existing carriers? If so, please explain.*
- (3.2) *For a given route, which airlines have you identified as the most likely potential entrants? Is new entry (on a given route) restricted due to restricted access to slots, terminal facilities, ground-*

handling facilities, computer reservation services, or some other reason? To what extent is new entry on international routes restricted by international agreement?

- (3.3) *Airlines can often lease aircraft, terminal services and computer reservation services? What are the most important sources of sunk costs of entry? What is the magnitude of these sunk costs?*
- (3.4) *To what extent is the threat of predatory pricing a deterrent to new entry or to vigorous competition? Is the prevention of predatory pricing ex post (i.e., after a merger has been approved) of more-than-average difficulty in the airline industry (because, for example, of the ease with which airlines can increase the number of discount seats)? Does the existence of multi-market contact between airlines affect the extent of competition between them?*
- (3.5) *Is there an asymmetry in the willingness to exit a market between a hub-and-spoke operator and a regional feeder or "point-to-point" airline (because the loss of a spoke on a hub-and-spoke network may reduce the traffic and therefore the profitability of the remaining network)?*

4. Competitive effects of mergers and alliances

- (4.1) *In considering airline mergers and alliances have you sought to quantify the anticompetitive effects? What anti-competitive effects were forecast? Were the forecasts accurate?*
- (4.2) *In considering airline mergers and alliances what consideration was taken of potential explicit or implicit co-ordinated behaviour amongst the surviving airlines ex post? Are there factors in the airline industry, which might particularly favour such co-ordination? What are these factors?*

5. Efficiency benefits from alliances and mergers

- (5.1) *The efficiency benefits from airline mergers and alliances might include more efficient connecting services, enhanced value of the frequent-flyer program, more efficient use of terminal facilities and ground-handling facilities and elimination of double-marginalisation. What efficiency benefits have been claimed in practice? Have these benefits been quantified?*
- (5.2) *International alliances allow airlines to take advantage of certain efficiency benefits in circumstances where national laws prevent or discourage full merger. What efficiency benefits of international alliances have been claimed?*

6. Competition issues at hub or dominated airports

- (6.1) *Competition concerns in airlines have particularly arisen in relationship to "hub" airports in which a significant proportion of the passenger movements are accounted for by a single airline. To what extent have such concerns arisen in your country? Is airline dominance of an airport of concern if the airline faces adequate competition on each individual route it flies? Would the dominance of an airline at an airport be of concern in the absence of loyalty programs such as frequent-flyer programs or travel agent commission override programs?*

- (6.2) *What factors might erode the dominance of an airline at a single airport? Can a single airport act as a hub for more than one airline? In those airports where there are two or more dominant airlines, is the competition between these airlines more or less intense?*

7. Competition issues in related services

The provision of air transport services requires the input of a number of complementary (i.e., vertically-related) services, including terminal services, ground-handling services, computer-reservation services, travel agent services and so on. In principle, a firm, which is dominant in the provision of these services and vertically integrated into the provision of air transport services, has both the incentive and the ability to restrict competition in air transport services.

- (7.1) *Have cases arisen in which an airline (or group of airlines) has acquired a dominant position in the provision of these related services? In these cases, has it been necessary to impose special restrictions on the behaviour of these integrated firms to ensure that competitors have non-discriminatory access to the related services? Have these restrictions been successful? (In other words, is it possible to effectively control the access to competitors to the dominant services provided by an integrated rival?) Have there been cases where an airline has been forced to divest itself of these related services?*
- (7.2) *In some countries there sometimes appears to be a link (perhaps informal) between the national flag carrier and a major national airport. What mechanisms are in place to ensure that airport facilities (such as slots and gates) are allocated in a competitively neutral manner to carriers? Where the airport has tended to favour the national flag carrier, how might this change the incentives for foreign airlines to enter an alliance?*
- (7.3) *Specifically in the case of airline mergers and alliances, have cases arisen in which an airline alliance or merger threatened to restrict competition or create a dominant position in these related services?*

8. Remedies

- (8.1) *In challenging or approving mergers or alliances what remedies or conditions have been imposed? Has divestiture been required? Of what services? Have these remedies proved successful?*

9. Other issues

- (9.1) *Has your consideration of airline mergers and alliances involved international co-operation between competition authorities? Has this co-operation been successful? Please explain.*

- (9.2) *In some countries the final decision of the competition authority is subject to approval by a higher authority which is authorised to take into consideration wider “public interest” concerns. Has the opinion of the competition authority been rejected or overturned in airline cases? Has political pressure been brought to bear to influence the outcome of competition issues in airlines?*

QUESTIONS DU SECRÉTARIAT SUGGÉRÉES POUR LES CONTRIBUTIONS DES DÉLÉGUÉS*

Les questions se divisent en deux parties. Dans la première, il vous est demandé de résumer brièvement les principales caractéristiques réglementaires qui ont une incidence sur la concurrence dans les services de transport aérien. La seconde partie porte sur les problèmes que pose une fusion de compagnies aériennes du point de vue de la concurrence, en insistant sur les particularités du secteur du transport aérien. Tous les pays ne se seront pas penchés sur toutes ces questions, mais nous vous invitons à répondre à autant de questions que possible.

Au lieu de répondre à chacune des questions l'une après l'autre, vous jugerez peut-être plus opportun de présenter une ou plusieurs situations spécifiques qui se sont présentées dans votre pays, en gardant présent à l'esprit les questions ci-après. Les exemples de coopération internationale entre autorités de la concurrence revêtent un intérêt particulier à cet égard, mais ce ne sont pas les seuls.

Il est souvent impossible de distinguer les effets économiques d'une alliance étroite de ceux d'une fusion. Il s'ensuit que l'analyse d'une alliance du point de vue de la concurrence est dans une large mesure comparable à celle qui est effectuée pour une fusion. Dans les questions qui suivent, il ne sera par conséquent pas fait de distinction entre alliance étroite et fusion. Néanmoins, il est possible qu'il subsiste certaines différences importantes, que vous êtes invité le cas échéant à mettre en évidence.

Première partie : Résumé du régime réglementaire des services de transport aérien

Dans de nombreux pays, le transport aérien demeure un secteur soumis à une réglementation relativement forte. Cette réglementation a une incidence importante sur l'ampleur et la structure de la concurrence. Il importe par conséquent de bien en cerner la nature (surtout en ce qui concerne les services aériens internationaux) pour être en mesure de se pencher sur la question des fusions. Ces questions vous invitent à résumer brièvement les principales caractéristiques du régime réglementaire des services de transport aérien de passagers.

* Ces questions sont extraites du guide préliminaire procuré aux Membres pour les aider dans la préparation de leurs soumissions écrites. Elles sont réimprimées ici car quelques soumissions incluses dans cette publication y font référence.

1. Réglementation des licences et de l'entrée

- (1.1) *Quelles sont (le cas échéant) les restrictions réglementaires applicables à l'entrée de nouveaux concurrents sur le marché intérieur ? Quels critères d'attribution des licences sont appliqués ? Le nombre total de concurrents sur le marché intérieur est-il limité ?*
- (1.2) *La prestation de services internationaux est soumise à quelles restrictions ? A quelles restrictions sont soumises les compagnies aériennes en place dans l'expansion des services internationaux ? Quelles sont les nouvelles restrictions applicables à l'entrée sur le marché des services internationaux ? Les compagnies internationales peuvent-elles assurer des services intérieurs (tels que le "cabotage") ?*

Réglementation des prix et de la structure du capital ; application du droit de la concurrence

- (1.3) *Les prix et conditions que peuvent offrir les compagnies aériennes sont-ils soumis à des limites ? Le type d'avions pouvant être exploités ou le type de services pouvant être offerts font-ils l'objet de restrictions (motivées, par exemple, par des considérations environnementales) susceptibles d'avoir des incidences sur la concurrence ? La structure du capital des compagnies aériennes est-elle soumise à des restrictions ? Dans l'affirmative, préciser.*
- (1.4) *Existe-t-il des exemptions ou des exceptions dans l'application du droit de la concurrence au transport aérien (telles qu'une exemption pour les accords internationaux de transport aérien) ? Dans l'affirmative, préciser. A quelle instance incombe principalement l'application du droit de la concurrence dans ce secteur — l'autorité de la concurrence, un organisme de réglementation sectorielle, ou l'un et l'autre à la fois ? En cas de partage de compétence, comment les conflits sont-ils résolus ?*

Deuxième partie : Analyse de la concurrence

2. Définition du marché

- (2.1) *Quels marchés de services de transport aérien avez-vous définis lorsque vous avez analysé les questions de concurrence dans le secteur du transport aérien ? Comment avez-vous défini ces marchés ? La plupart des pays centrent leur démarche sur les marchés de "paires de villes", mais en ce qui concerne les villes desservies par plus d'un aéroport, les aéroports ne sont pas toujours considérés comme pouvant se substituer l'un à l'autre, du point de vue des voyageurs. C'est pourquoi il convient plutôt, le plus souvent, de se fonder sur la notion de marché de "paires d'aéroports" ?*
- (2.2) *Les compagnies aériennes s'efforcent en général de distinguer de nombreuses catégories de clients. Dans votre analyse, quelles catégories de clients constituent selon vous des marchés distincts ? Comment êtes-vous arrivé à cette conclusion ? Vos préoccupations relatives à la concurrence concernaient-elles plus particulièrement une catégorie de clients (tels que les*

voyageurs d'affaires, qui sont sensibles au facteur temps ?). Considérez-vous les vols sans escale comme un marché distinct des autres services ?

- (2.3) *Les compagnies aériennes cherchent également à réduire l'élasticité de la demande de leurs services en mettant en œuvre des programmes de fidélisation tels que les programmes pour grands voyageurs ou les programmes de supercommissions des agents de voyage, ou encore en négociant directement avec les clients importants. Ces types de programmes ou de pratiques sont-ils importants dans votre pays ? Ont-ils concrètement agi sur la nature de la demande pour certaines compagnies aériennes, en particulier aux aéroports-pivots ?*
- (2.4) *Dans quelle mesure la concurrence intermodale (par exemple celle du train à grande vitesse) discipline-t-elle la tarification des compagnies aériennes ? Le niveau de concurrence (intramodale ou intermodale) varie-t-il de façon systématique en fonction de la distance parcourue ?*

3 Barrières à l'entrée, à l'expansion et à la sortie

- (3.1) *Pour une route donnée, existe-t-il des barrières ou des restrictions qui empêchent l'expansion des services des transporteurs en place (telles que les contraintes de disponibilité des créneaux de décollage et d'atterrissage) ? S'agissant des routes internationales, les accords internationaux empêchent-ils l'expansion des services des transporteurs en place ? Dans l'affirmative, préciser.*
- (3.2) *Pour une route donnée, quelles compagnies avez-vous identifiées comme les entrants potentiels les plus vraisemblables ? L'entrée d'un nouveau concurrent sur une route donnée est-elle limitée par un accès restreint aux créneaux, aux installations et services aéroportuaires, aux services d'escale, aux services informatisés de réservation ou par d'autres facteurs ? Dans quelle mesure l'entrée sur les routes internationales est-elle limitée par voie d'accord international ?*
- (3.3) *Les compagnies aériennes peuvent-elles souvent louer les aéronefs, les services aéroportuaires ainsi que les services informatisés de réservation dont elles ont besoin ? Quelles sont les sources les plus importantes de coûts irrécupérables d'entrée ? Quelle est l'ampleur de ces coûts ?*
- (3.4) *Dans quelle mesure la menace de tarification prédatrice a-t-elle un effet dissuasif sur les nouveaux entrants potentiels ou sur la vigueur de la concurrence ? Est-ce que la prévention de la tarification prédatrice a posteriori (c'est-à-dire après l'approbation d'une fusion) est plus difficile dans le secteur du transport aérien qu'ailleurs (en raison, par exemple, de la facilité avec laquelle les compagnies aériennes peuvent accroître le nombre de sièges à tarif réduit qu'elles offrent) ? Le fait que les compagnies aériennes soient en contact sur de nombreux marchés a-t-il une influence sur le degré de concurrence qu'elles se livrent ?*
- (3.5) *Y a-t-il asymétrie entre le consentement à sortir d'un marché d'un exploitant de réseau en étoile et celui d'une compagnie régionale ou "point à point" (parce que la perte d'une radiale sur un réseau en étoile risque de réduire le trafic et par conséquent la rentabilité du reste du réseau) ?*

4. Effets des fusions et des alliances sur la concurrence

- (4.1) *Lorsque vous avez examiné les fusions et les alliances de compagnies aériennes, avez-vous cherché à quantifier leurs effets anti-concurrentiels ? Quels effets de ce type étaient prévus ? Les prévisions se sont-elles révélées exactes ?*
- (4.2) *Lorsque vous avez examiné les fusions et les alliances de compagnies aériennes, dans quelle mesure avez-vous pris en compte la possibilité que les compagnies aériennes issues des fusions ou des alliances coordonnent de façon explicite ou implicite leur comportement a posteriori ? Existe-t-il dans le secteur du transport aérien des facteurs susceptibles de favoriser plus particulièrement ce genre de coordination ? Quels sont-ils ?*

5. Gains d'efficacité découlant des alliances et des fusions

- (5.1) *Les gains d'efficacité découlant des fusions ou des alliances de compagnies aériennes peuvent être liés à des correspondances plus efficaces, à l'augmentation de la valeur des programmes pour grands voyageurs, à une utilisation plus efficace des installations aéroportuaires et services d'escale ainsi qu'à l'élimination de la double marginalisation. Quels gains d'efficacité ont été déclarés dans la pratique ? Ces gains ont-ils été quantifiés ?*
- (5.2) *Les alliances internationales permettent aux compagnies aériennes de tirer parti de certains gains d'efficacité là où la législation nationale interdit ou décourage la fusion pure et simple. Quels gains d'efficacité a-t-on attribué aux alliances internationales ?*

6. Problèmes de concurrence aux aéroports-pivots ou aux aéroports où une compagnie occupe une position dominante

- (6.1) *Les préoccupations que suscitent à la concurrence entre compagnies aériennes concernent surtout les aéroports-pivots dans lesquels une proportion importante du trafic passagers revient à une seule compagnie. Quelle a été l'importance de ces préoccupations dans votre pays ? Est-ce que la position dominante d'une compagnie aérienne dans un aéroport est une source de préoccupation si cette compagnie fait face à une concurrence suffisante sur chacune de ses dessertes ? Cette position dominante serait-elle préoccupante s'il n'existait pas de programmes de fidélisation tels que les programmes pour grands voyageurs ou les programmes de supercommission des agents de voyage ?*
- (6.2) *Quels facteurs pourraient affaiblir la position dominante d'une compagnie aérienne à un aéroport donné ? Est-ce qu'un même aéroport peut servir de pivot à plus d'une compagnie aérienne ? Dans les aéroports où plusieurs compagnies aériennes occupent une position dominante, la concurrence entre ces compagnies est-elle plus, ou moins intense ?*

7. Problèmes de concurrence dans les services connexes

La prestation de services de transport aérien fait appel à de nombreux services complémentaires (en relation verticale), notamment les services aéroportuaires, les services d'escale, les services informatisés de réservation et les services d'agents de voyage. En principe, une entreprise qui occupe une position dominante dans la prestation de ces services en relation verticale avec la prestation de services du transport aérien a non seulement des raisons, mais aussi les moyens de limiter la concurrence dans les services de transport aérien.

- (7.1) *Est-il déjà arrivé qu'une compagnie aérienne (ou un groupe de compagnies) s'approprie une position dominante dans la prestation de ces services connexes ? A-t-il alors été nécessaire d'imposer des restrictions particulières à la conduite de ces entreprises intégrées pour veiller à ce que les concurrents aient accès sans discrimination aux services en question ? Ces restrictions ont-elles donné des résultats ? (Autrement dit, est-il possible de contrôler efficacement l'accès des concurrents aux services fournis par un rival intégré occupant une position dominante ?) Est-il arrivé que l'on oblige une compagnie à se désengager de ces services connexes ?*
- (7.2) *Dans certains pays, il semble parfois exister un lien (peut-être officieux) entre la compagnie de pavillon nationale et un grand aéroport du pays. Quels mécanismes en place garantissent l'attribution sans discrimination des installations et services aéroportuaires (telles que les créneaux et les portes) aux transporteurs ? Si l'aéroport a tendance à favoriser la compagnie de pavillon nationale, de quelle façon cela pourrait influencer sur les motivations des compagnies aériennes étrangères d'adhérer à une alliance ?*
- (7.3) *S'agissant précisément des fusions et des alliances de compagnies aériennes, est-il arrivé qu'une alliance ou une fusion menace de limiter la concurrence ou de créer une position dominante dans ces services connexes ?*

8. Moyens réglementaires

- (8.1) *S'agissant de contester ou d'approuver les fusions ou les alliances, quels ont été les moyens utilisés ou les conditions imposées ? Le désengagement a-t-il été imposé ? De quels services ? Ces moyens se sont-ils révélés efficaces ?*

9. Autres questions

- (9.1) *Lorsque vous avez examiné la question des fusions et des alliances de compagnies aériennes, y a-t-il eu coopération internationale entre les autorités de la concurrence ? Cette coopération s'est-elle révélée fructueuse ? Préciser.*

- (9.2) *Dans certains pays, la décision définitive de l'autorité de la concurrence doit être entérinée par une instance supérieure habilitée à prendre en compte les préoccupations plus larges de "l'intérêt public". L'opinion de l'autorité de la concurrence a-t-elle été rejetée ou renversée dans des affaires impliquant des compagnies aériennes ? L'issue de problèmes de concurrence dans le domaine du transport aérien a-t-elle fait l'objet de pressions politiques ?*

AUSTRALIA

Before addressing the issues listed in the Secretariat discussion paper, a brief description of the domestic and international airline markets from the Australia perspective is provided.

Domestic – Australia has two major airlines operating on domestic trunk routes. Qantas accounts for 52 percent of the market, with Ansett accounting for the remaining 48 percent of the market. In 1998 the domestic Australian airlines carried 25.4 million passengers. The three busiest routes, Sydney-Melbourne, Sydney-Brisbane and Brisbane-Melbourne accounted for 38 percent of all passenger movements and the top ten routes accounted for almost 70 per cent.

Domestic regional airlines operate aircraft with 38 seats or less, or payloads of 4 200 kilograms or less. In 1998 they carried 4.3 million passengers. With few exceptions, they are owned by or closely aligned with either Qantas or Ansett, the major domestic trunk route operators.

International – In 1998 there were approximately 106 000 international aircraft movements, 14.2 million international passenger movements, 632 000 tonnes of international freight and 23 000 tonnes of mail to and from Australia. Australia is served by 57 international airlines of which eight operate on a code share basis only. The most important of these is Qantas with 36.4 percent of the market¹. The other main carriers are Air New Zealand (ten per cent), Singapore Airlines (eight percent), British Airways (five percent) and Malaysia Airlines (five percent). Australia's second largest international carrier, Ansett International, operates its own aircraft on five routes, code shares on several others and accounts for approximately four per cent of the market.

Sydney Airport is Australia's principal gateway and in 1998 accounted for around half the passenger and freight movements in and out of Australia.

Australia's geographic location provides significant opportunities for the carriage of fifth freedom traffic by foreign and domestic carriers, and sixth freedom traffic for foreign carriers. This leads to keen price competition for services on routes between Australia and Europe. The relatively liberal capacity arrangements in Australia's air services arrangements (ASAs) (as described below in Part I) means that carriers are seldom capacity constrained in catering for fifth and sixth freedom traffic.

1. Summary of the regulatory regime for air services

1.1 Regulation of licensing and entry

(1.1) What are the regulatory restrictions (if any) on new domestic entry? What licensing requirements exist? Are their limits on the total number of domestic competitors?

In Australia's domestic aviation market, new entry is largely determined by market forces. Licensing requirements are related to safety only and there are no limits on the number of domestic airline

competitors. There are, however, some requirements relating to foreign ownership of domestic airlines administered by the Foreign Investment Review Board (FIRB)².

The Government has announced its intention to amend the relevant FIRB Guidelines to replace the references to foreign airline holdings with a simple national interest test. This is likely to occur later this year.

Recently announced changes to foreign ownership rules for Australian airlines will allow foreign persons (including foreign airlines) up to 100 percent of the equity in an Australian domestic airline, unless this is judged contrary to the national interest.

(1.2) What restrictions exist in the provision of international services? What restrictions exist on existing airlines in the expansion of international services? What restrictions exist on new entry in international services? Can international airlines provide domestic services (such as “cabotage”)?

Scheduled international air services are operated within a legal framework pursuant to bilateral ASAs between countries. The Australian Government is committed to the bilateral and multilateral liberalisation of ASAs.

Australia believes that current ownership and control provisions of ASAs are a major impediment to liberalisation. Australia will be proposing that international aviation be liberalised on a multilateral basis through the General Agreement on Trade in Services (GATS) round that begins in 2000. Australia's ownership and control rules are discussed in (1.3) below.

Australian airlines intending to operate international services require a determination allocating capacity, issued by the International Air Services Commission (IASC)³ according to a “reasonable capability” test and public benefit criteria. These tests are transparent, and publicly applied to all applicants. They are also used as the basis for allocating capacity when bids from Australian airlines exceed the amount of capacity available under the relevant bilateral agreement.

Foreign airlines do not require an IASC determination but must be designated by their own country and operate within bilateral entitlements.

In addition, all airlines, whether Australian or foreign, operating international services face a number of universally applied regulatory requirements on safety and security.

Foreign airlines may expand their services according to market demands, provided they are within the bilateral entitlements of the relevant ASA.

Australian international airlines are permitted to operate domestic services. With the exception of New Zealand owned airlines, cabotage is not permitted for foreign international airlines.

Where permitted in bilateral agreements, foreign international airlines are permitted to operate domestic services for own stopover traffic and can access beyond gateway rights through code sharing on domestic carriers. When the FIRB guidelines are amended, international airlines will be permitted to operate domestic services through domestic subsidiaries, subject to a simple national interest test applied to all international investors.

1.2 *Regulation of prices and ownership; Application of Competition Law*

(1.3) *Are their limits on the prices or terms of conditions that airlines can offer? Are their restrictions (e.g. for environmental reasons) on the types of planes that can be flown or the types of services that can be offered that might have competition implications? Are there controls on the ownership of airlines? If so, please explain.*

There are no limits on the prices or terms of conditions that airlines can offer for domestic services other than through the general provisions of Australia's competition law, the *Trade Practices Act 1974* (the Act) which is administered by the Australian Competition and Consumer Commission (the Commission).

The only regulation on prices or terms of conditions that airlines can offer on international services, beyond the limits of general competition law, are those specified in the tariff clauses of the relevant ASAs. In practice, where approval is required in the ASA, the Department of Transport and Regional Services routinely approves the relevant tariffs.

The main environmental restrictions on the type of aircraft that can be flown are noise restrictions. Aircraft operating in Australia currently must meet the noise standards of Chapter 2 of Annex 16 of the Chicago Convention. By 2002 all aircraft will have to meet the higher standards for noise, as specified in Chapter 3 of the above Annex. Aircraft are restricted by legislation in the hours they may operate to Sydney Airport, whilst voluntary curfews exist in Adelaide and Coolangatta airports.

Ownership and control rules for Australian international carriers (with the exception of Qantas which is specified by the *Qantas Sale Act 1992* as restricting total foreign ownership to a maximum of 35 percent in aggregate, with individual holdings limited to 25 percent), are specified in the Air Navigation Act 1920.

The Australian Government has announced its intention to amend the relevant provisions of the Air Navigation Act to replace the references to foreign airline holdings with a requirement that no more than 49 percent of an Australian international airline may be owned by foreign persons. Ownership and control arrangements applying to Qantas, as set out in the Qantas Sale Act, will not change.

Under the Air Navigation Act as it now stands, for an Australian international airline:

- no more than 35 percent in aggregate of equity may be held by foreign airlines; and
- no more than 25 percent of equity may be held by an individual foreign airline.

In addition to this, the Government has specified a series of control provisions including that:

- at least two-thirds of the Board members are Australian citizens;
- the Chairperson of the Board must be an Australian citizen;
- the airline's head office must be in Australia; and
- the airline's operational base must be in Australia.

Foreign airline investment in domestic services is covered at 1.1 above.

- (1.4) *Are there exemptions or exceptions in the application of competition law to the airline industry (such as an exemption for international air agreements)? If so, please explain. Who has primary responsibility for enforcing competition law in this sector – the competition authority, a sectoral regulator, or some combination? If jurisdiction is shared, how are conflicts resolved?*

There are no general exceptions to the application of competition law to the airline industry. The Commission authorised⁴ the close commercial relationship between Qantas and British Airways⁵ and another covering Ansett International, Ansett Australia, Singapore Airlines and Air New Zealand⁶. In both these cases, the allied airlines proposed potentially anti-competitive activities such as joint price setting and revenue pooling on particular routes, which the Commission decided to allow on the grounds of overall public benefit.

Primary responsibility for enforcing competition law to the airline industry lies with the Commission. The IASC allocates capacity to Australian carriers to operate international services using public benefit criteria, which includes the promotion of competition. The Commission and the IASC have a Memorandum of Understanding, which specifies areas of authority and promotes co-operation between the two commissions so as to, prevent conflicts from occurring.

2. Competition analysis

2.1 Market definition

- (2.1) *In analysing competition issues in the airline industry, what air transport services markets have you identified? How did you make that determination? Most countries focus on “city-pair” markets, but for cities with more than one airport, these airports may not be viewed as close substitutes from the perspective of travellers – for which cases is it more appropriate to focus on “airport-pair” markets?*

The Commission has examined only international markets and defined them on the basis of broad geographic areas, rather than on a city-pair or airport-pair basis. It has done so because the distances involved in travelling from Australia make alternative routings more viable (and the way in which passenger and freight data are collected enables comparison of direct and indirect travel markets). For example, a passenger wishing to travel from Sydney to Bangkok may go direct or via Kuala Lumpur or Singapore (for a marginally longer elapsed journey time). The indirect routes are reasonable substitutes for the direct route and their pricing serves as a strong restraint on the price of direct services. In such circumstances it was considered inappropriate to define markets narrowly on a city pair basis.

However should domestic services in Australia be examined it is likely that a city pair definition would be used.

- (2.2) *Airlines typically seek to distinguish between many classes of customers. In your analysis which classes of consumers have you distinguished as separate markets? How did you arrive at that determination? Were your competition concerns focused on a particular class of consumer (such as time-sensitive business travellers?) Did you distinguish non-stop as a separate market from other connecting services?*

The Commission has not sought to distinguish between classes of customers. In its Determination authorising the Joint Services Agreement (JSA) between Qantas and British Airways it stated that:

...differences in demand characteristics between fare classes are not themselves sufficient to delineate separate markets between, for example, discretionary and non-discretionary travellers. The Commission rejected the concept of a separate market for first, business and economy class seats on a plane and concluded that the distinctions between fare classes defined segments within a market, rather than constituting different markets⁷.

As an illustration, a business class ticket on some carriers from Australia to London is not much more than an economy class ticket on others. Thus a leisure traveller could fly business class rather than economy. Similarly, a business traveller may fly economy class due to a travel contract between his/her company and the airline or because of time constraints. Thus class of travel is not indicative of cost, purpose or time sensitivity.

As noted in (2.1) above, non-stop flights have not been considered as a separate market to indirect flights. Due to Australia's geography, many flights require more than one sector and so indirect flights on fifth or sixth freedom carriers are almost identical to services offered by third and fourth freedom carriers. For closer destinations, such as South East Asia, indirect flights are feasible options and their pricing acts as a constraint on prices charged by direct operators.

(2.3) *Airlines also seek to lower the elasticity of demand for their services through loyalty programs such as frequent-flyer programs, travel-agent incentive programs, or through direct negotiation with large customers. Are such programs important in your country? Have they materially changed the nature of demand for certain airlines, particularly at "hub" airports?*

Loyalty programs and travel contracts between companies and specific airlines are very important in Australia. Given that most companies have larger domestic travel budgets than international travel budgets, they tend to align themselves with either of the two domestic airlines, Qantas and Ansett, and use their international alliance partners (Oneworld and Star respectively) for both their travel needs – "one stop" agency arrangements are preferred. There are also high membership rates for frequent flyer programs in Australia, aided by the ability to accrue frequent flyer points via credit card usage and various other means.⁸

(2.4) *To what extent does inter-modal competition (such as high-speed train service) discipline airline pricing? Does the level of competition (intra-modal or inter-modal) vary in a systematic way with the distance travelled?*

Inter-modal competition in Australia's international markets is only possible by sea, and because of the distances involved, virtually non-existent. In domestic markets, there is relatively little inter-modal competition for business traffic because of the distances involved and consequent timesaving. For leisure travel, there is competition from private cars, buses and trains.

2.2 Barriers to entry, expansion and exit

(3.1) *For a given route, are there barriers or restrictions that prevent an expansion of services by existing carriers (such as constraints on the availability of take-off and landing slots)? In the*

case of international routes, do international agreements prevent an expansion in services by existing carriers? If so, please explain.

For domestic routes, there are no regulatory restrictions on existing carriers from expanding services on any route.

For international routes, Australia's air services agreements are liberal with regards to multiple designation, capacity and route entitlement as a result of Government policy.

For Australia's largest markets, capacity is either unlimited (e.g. New Zealand and the USA) or negotiated to be well in excess of current requirements (e.g. Singapore and the U.K.).

(3.2) *For a given route, which airlines have you identified as the most likely potential entrants? Is new entry (on a given route) restricted due to restricted access to slots, terminal facilities, ground-handling facilities, computer reservation services, or some other reason? To what extent is new entry on international routes restricted by international agreement?*

With regard to entry by new Australian airlines on international routes, an issue is the ability to access venture capital, as the return on funds is low when compared to the risk. There are few cases where new entry is restricted due to air service agreements. The regulatory regime (International Air Services Commission Act 1992) for allocating capacity entitlements among Australian carriers is biased towards new entrants on a route.

(3.3) *Airlines can often lease aircraft, terminal services and computer reservation services. What are the most important sources of sunk costs of entry? What is the magnitude of these sunk costs?*

In the Australian context, one of the largest sunk costs is the cost of establishing a market presence (e.g. marketing, advertising and establishing loyalty programs). Overcoming this problem takes time and involves considerable expenditure, although the Commission does not have an accurate estimate of the amount that would be involved.

(3.4) *To what extent is the threat of predatory pricing a deterrent to new entry or to vigorous competition? Is the prevention of predatory pricing ex post (i.e. after a merger has been approved) of more-than-average difficulty in the airline industry (because, for example, of the ease with which airlines can increase the number of discount seats)? Does the existence of multi-market contact between airlines affect the extent of competition between them?*

Predatory pricing is difficult to prove in the airline context, as the marginal cost of carrying an extra passenger is minimal. One relevant issue for international airlines in the Australian market is the over supply of seats, especially in light of the excess capacity available to Asian carriers following the economic problems in that region in recent years. This will obviously have an impact on the profitability of airlines operating in the region. For example, current fares from Australia to Europe are in the order of US\$1 000 return, well below their level of three years ago.

In the case of domestic airline operations, past failures by new entrant airlines to establish themselves in the market as direct competitors to the major trunk route carriers, in part caused by price competition from the two major incumbent airlines and passenger loyalty to them, has made it difficult to find potential investors for new airlines.

- (3.5) *Is there an asymmetry in the willingness to exit a market between a hub-and-spoke operator and a regional feeder or “point-to-point” airline (because the loss of a spoke on a hub-and-spoke network may reduce the traffic and therefore the profitability of the remaining network)?*

This is not a major issue in Australia. The largest domestic regional airlines are owned by the domestic airlines and such decisions are, most usually, made within the group.

2.3 *Competitive effects of mergers and alliances*

- (4.1) *In considering airline mergers and alliances have you sought to quantify the anti-competitive effects? What anti-competitive effects were forecast? Were the forecasts accurate?*
- (4.2) *In considering airline mergers and alliances what consideration was taken of potential explicit or implicit co-ordinated behaviour amongst the surviving airlines ex post? Are there factors in the airline industry, which might particularly favour such co-ordination? What are these factors?*

In 1992 Qantas, then an exclusively international airline wholly owned by the Australian Government, and Australian Airlines, then an exclusively domestic airline wholly owned by the Australian Government, merged to form a combined domestic / international entity.

2.3.1 *Domestic alliances*

Most domestic regional and commuter airlines are aligned with either Qantas or Ansett. In many instances, the smaller airlines are wholly owned by Qantas or Ansett and were established by them.

Australia’s domestic services are an effective duopoly and have been so since the establishment of the two-airline policy in the 1950s. Even though the domestic airline industry has been deregulated, two notable attempts at establishing a viable third domestic trunk airline have failed for various reasons. Amongst these reasons are existing alliances between domestic regional/commuter operators and Qantas or Ansett as it restricts the volume of feed traffic available to a third domestic operator.

In 1992 the Commission was requested by the Government to investigate and publicly report⁹ on the principal causes and consequences of the failure of Compass Airlines to enter to Australian domestic airline market as a third significant player. Many factors explained the demise of Compass, including:

- shortcomings in the entry strategy and management of Compass appear to have been the most important contributing factor in the failure of the airline. Compass’ entry strategy misjudged the operational, economic and regulatory obstacles to large scale entry into the domestic market; and misjudged the competitive advantages of the incumbent airlines, their responses to the additional capacity introduced by Compass and the capitalisation required for successful entry in these market conditions;
- compass was under capitalised (partly because foreign ownership laws prevented a major international airline owning a domestic airline). Compass also faced liquidity problems when it commenced operations and had difficulty in raising debt financing;

- entry occurred during a recession, which worsened the market environment for all three major airlines, resulting in fiercer competition than might have otherwise occurred;
- compass experienced problems in gaining access to terminal space at airports, and had inadequate baggage handling and passenger assembly facilities at some airports;
- compass had a relatively poor computer reservation system compared to the incumbent airlines, which had an adverse effect on its access to business through travel agents;
- although Compass enjoyed lower operating costs than the incumbents, its yields were also lower as it only provided a single class 'no frills' service based on discount fares, catering principally for leisure and non-business travel. Further, the incumbents were able to engage in price discrimination, charging higher prices on non-Compass routes;
- incumbent airlines had several years warning of the new entry and were tactically prepared. The Commission's investigations however, found no evidence of predatory pricing conduct but rather that the incumbent airlines had pursued legitimate competitive strategies to maximise profits (minimise losses) under conditions of excess capacity and general economic recession.

2.3.2 *International alliances*

Qantas is a member of the Oneworld alliance and Ansett is a member of the Star alliance. In addition, each airline has a number of other bilateral alliances (e.g. Qantas/British Airways, Qantas/Japan Airlines, Qantas/Air Pacific, Ansett/Singapore Airlines, Ansett/South African Airways).

Most international airlines are aligned with either Qantas or Ansett (e.g. on-carriage arrangements, special pro-rating of fares). The trend to alliances has, to a certain extent, merely formalised the previous arrangements.

The Commission has experience in authorising two alliance agreements – the Joint Services Agreement (JSA) between Qantas and British Airways and the alliance agreement between Ansett, Air New Zealand and Singapore Airlines. In some respects, these agreements can be seen as trying to bring about many of the benefits that a merger would otherwise achieve whilst avoiding the numerous political and public relations issues that would arise from an actual take-over. British Airways purchased a 25 percent of Qantas in 1993. Under the Qantas Sale Act, British Airways was not permitted to increase this share when Qantas was publicly floated in 1995.

In 1995 Qantas and British Airways sought authorisation for a wide ranging Joint Services Agreement on the Kangaroo Route operating between Australia and Europe, as well as services operating between Australia and South East Asia, and South East Asia and Europe. Authorisation was sought because the agreement contains provisions which may have the purpose or effect of fixing prices, a *per se* contravention of the Act. The JSA provides for the co-ordination of various aspects of their airline services, including capacity, scheduling, pricing and relevant sales and marketing functions.

The Commission reached the view that the JSA was likely to lessen competition on Australian / European routes. In reaching that view the Commission took account of the fact that Qantas and British Airways had a combined market share of around 50 percent, and British Airways had been one of the most active competitors to Qantas in previous years. The Commission was further concerned that competition, especially on price, came from a small number of carriers, most of which had only small market shares. A

number of airlines claimed that there was low profitability on certain Australia / Europe routes, which may have encouraged competitors to raise their prices should Qantas and British Airways raise price, rather than continue to compete for market share. The Commission also considered that opportunities for many potential and existing competitors to further contest the markets affected by the JSA were limited by a number of factors, including capacity rights under bilateral agreements and airport landing slot allocations both in Australia and overseas.

The JSA authorisation application was finally approved by the Commission, subject to certain conditions, after being initially rejected. While the JSA was seen as likely to result in a lessening of competition, the benefits also resulting from the JSA, discussed below, were considered to outweigh these anti-competitive detriments. The authorisation conditions on pricing were imposed to ensure that these benefits were passed on to consumers.

2.4 Efficiency benefits from alliances and mergers

(5.1) *The efficiency benefits from airline mergers and alliances might include more efficient connecting services, enhanced value of the frequent-flyer program, more efficient use of terminal facilities and ground-handling facilities and elimination of double-marginalisation. What efficiency benefits have been claimed in practice? Have these benefits been quantified?*

(5.2) *International alliances allow airlines to take advantage of certain efficiency benefits in circumstances where national laws prevent or discourage full merger. What efficiency benefits of international alliances have been claimed?*

The Commission examined the efficiency benefits of airline alliances during its consideration of the authorisation applications by Qantas / British Airways and Ansett / Air New Zealand / Singapore Airlines.

The efficiency benefits claimed in both of these alliances included rationalisation of marketing and office space, better seat management, better use of each others facilities in home ports (such as calling on spare parts such as engines if necessary), better aircraft utilisation, better air and ground crew utilisation, savings on purchases (including aircraft), lower maintenance costs through specialisation in specific aircraft types by different alliance partners, and reduced IT costs through joint ventures and consolidation of call centres.

In each case the applicants provided, on a confidential basis, estimates of potential savings. Qantas has made some public statements about savings achieved under the JSA but these are not normally attributed to a specific activity but rather the alliance in toto.

Qantas and British Airways have recently applied to the Commission for authorisation of a restated JSA and have provided confidential estimates of savings achieved under the existing JSA.

2.5 Competition issues at hub or dominated airports

(6.1) *Competition concerns in airlines have particularly arisen in relationship to “hub” airports in which significant proportions of the passenger movements are accounted for by a single airline. To what extent have such concerns arisen in your country? Is airline dominance of an airport of*

concern if the airline faces adequate competition on each individual route it flies? Would the dominance of an airline at an airport be of concern in the absence of loyalty programs such as frequent-flyer programs or travel agent commission override programs?

- (6.2) *What factors might erode the dominance of an airline at a single airport? Can a single airport act as a hub for more than one airline? In those airports where there are two or more dominant airlines, is the competition between these airlines more or less intense?*

Dominance at a specific airport has not been a significant issue in Australia.

2.6 Competition issues in related services

- (7.1) *Have cases arisen in which an airline (or group of airlines) has acquired a dominant position in the provision of these related services? In this case, has it been necessary to impose special restrictions on the behaviour of these integrated firms to ensure that competitors have non-discriminatory access to the related services? Have these restrictions been successful? (In other words, is it possible to effectively control the access to competitors to the dominant services provided by an integrated rival?) Have there been cases where an airline has been forced to divest itself of these related services?*

There have not been any examples of where an airline has been required to divest itself of a related service.

The major airlines in the region – Qantas, Ansett and Air New Zealand – collectively own Travel Industries Automated Systems Pty Ltd (TIAS) which distributes the two main computer reservation systems used in Australia (Sabre and Galileo). TIAS applied for, and was granted, an authorisation for a code of conduct concerning computer reservation services provided to travel agents¹⁰. Essentially the code required non-discriminatory access and unbiased screen displays. Whilst the authorisation for the code has expired, the companies still adhere to the vast bulk of the code and there have been limited complaints about access to the computer reservation services.

- (7.2) *In some countries there sometimes appears to be a link (perhaps informal) between the national flag carrier and a major national airport. What mechanisms are in place to ensure that airport facilities (such as slots and gates) are allocated in a competitively neutral manner to carriers? Where the airport has tended to favour the national flag carrier, how might this change the incentives for foreign airlines to enter an alliance?*

Airport slots are allocated in accordance with IATA rules. No airport in Australia is slot constrained, although some current estimates indicate that Sydney may become slot constrained in peak periods in the next five years. This issue is being addressed through a slot management system.

- (7.3) *Specifically in the case of airline mergers and alliances, have cases arisen in which an airline alliance or merger threatened to restrict competition or create a dominant position in these related services?*

There have been no such instances in Australia.

2.7 Remedies

(8.1) *In challenging or approving mergers or alliances, what remedies or conditions have been imposed? Has divestiture been required? Of what services? Have these remedies proved successful?*

In approving the Joint Services Agreement between Qantas and British Airways in 1995 for a period of five years, the Commission imposed a number of conditions relating to the permissible increase in certain fare types. The increases were limited to no more than the increase in the Consumer Price Index, involved discounted fare types used by most passengers and also involved the number of passengers on each fare type.

The conditions have proven to be unnecessary given market developments and developments in technology. Increasing aircraft efficiency and available capacity have been contributing factors to a fall in prices. Current fares are approximately forty per cent below that permissible under the authorisation conditions set by the Commission.

2.8 Other issues

(9.1) *Has your consideration of airline mergers and alliances involved international co-operation between competition authorities? Has this co-operation been successful? Please explain.*

Following the announcement of the Oneworld alliance, the Commission contacted competition authorities in Canada, USA, UK, EU and Hong Kong, as airlines in those countries are original members of Oneworld.

(9.2) *In some countries the final decision of the competition authority is subject to approval by a higher authority which is authorised to take into consideration wider “public interest” concerns. Has the opinion of the competition authority been rejected or overturned in airline cases? Has political pressure been brought to bear to influence the outcome of competition issues in airlines?*

The Commission’s decisions are appellable, either to the Australian Competition Tribunal (the Tribunal) or the Federal Court, depending on the nature of the decision. No airline related decision of the Commission has been successfully appealed. Its approval of the Ansett/Singapore Airlines/Air New Zealand alliance was appealed to the Tribunal but that appeal did not progress to a hearing as the Tribunal decided the appellant was not a person with sufficient interest in the matter.¹¹

In relation to authorisation of the Joint Services Agreement between Qantas and British Airways, the Commonwealth Government supported authorisation and made a public submission to that effect. However, it was only one of a number of submissions taken into account by the Commission in reaching a decision. Due to the appeal procedures available to dissatisfied parties, the ability of a decision to be unduly influenced by political pressure is severely limited.

NOTES

1. Based on the number of passenger arrivals and departures.
2. IRB is a non-statutory body established in April 1976 to advise the Government on foreign investment policy and its administration.
3. The IASC is an independent body governed by its own Act of Parliament.
4. Under the authorisation provisions of the Trade Practices Act the Commission has the power to grant immunity from legal proceedings for some arrangements or conduct that might otherwise breach the restrictive trade practices provisions of the Act on the basis of countervailing public benefits.
5. *Qantas Airways Limited and British Airways Plc (1995) ATPR (Com) 50-184.*
6. *Air Alliance (1998) ATPR (Com) 50-265.*
7. *Qantas, op.cit.*, at p 55,558.
8. However it is important to note that loyalty programs tend not to influence flight routings domestically as Australian domestic airlines do not work with the hub/spoke concept on main routes. Such loyalty programs may be a significant entry barrier to the regional airlines who feed into the hubs.
9. Trade Practices Commission. *The failure of Compass Airlines. Report by the Trade Practices Commission.* February 1992.
10. *Travel Industries Automated Systems Pty Ltd (1993) ATPR 50-131.*
11. *Re: Application by PK Wakeman for a review of the determination by the Australian Competition and Consumer Commission in relation to the Alliance Agreement (1999) ATPR 41-675.*

CZECH REPUBLIC

1. Regulation

Basic conditions for doing business in air transport in the Czech Republic are stipulated by the Act No. 49/1997 Coll., on Civil Aviation ("the Act"). The Act provides conditions for construction and operation of aircraft and air buildings, conditions for the use of airspace and providing air services, conditions for aviation, protection of aviation, conditions for using sports air machinery, and state administration execution. The Act also established the Office for Civil Aviation ("OCA") located in Prague, which is subordinate to the Ministry of Transport and Communications ("Ministry"). The OCA is headed by a Director appointed at the pleasure of the Minister of Transport and Communications. The OCA and the Ministry perform administration regarding civil aviation.

The Act also instituted an "aviation register", *i.e.* a register of aircraft operated by a resident natural person or a legal person headquartered in the Czech Republic. The aviation register, open to public inspection, contains basic data about aircraft that obtained a new certificate of flight worthiness or whose certificate was granted validity. The OCA also maintains records of aviation personnel.

Czech Republic airspace is open, subject to conditions specified by the Act, an international treaty, and provided rules pertaining to flying in the airspace are complied with. Aviation safety and smooth traffic in the Czech airspace is ensured through aerial operation services, including airport services, air telecommunication, information and meteorological service, search and rescue air service, pre-flight service and flight monitoring, and services for customs clearance at the airport.

Commercial air transport, *i.e.* of persons, animals, luggage, things and mail can be operated on the basis of a licence or as air taxi transport. Commercial air transport is subdivided into regular and irregular, and into domestic and international air service. A licence required to operate commercial air transport can be issued by the Ministry on request. To obtain a licence, the applicant must prove that:

- all natural persons that are members of its statutory body, or functioning as its statutory body are: (i) at least 21 years old, and (ii) capable of legal acts;
- at least one member of the statutory body or its responsible representative meets the qualification requirements (certificate of finishing secondary or university education with economic, transport, technical or legal orientation and at least five-year experience in civil aviation);
- it qualifies as a domestic airline operator, *i.e.* that it meets the requirements concerning the property of the legal person and its control as specified below; and
- it has sufficient financial resources to operate commercial air transport at least for the period of 24 months from the commencement of the transport.

A domestic airline operator intending to operate international commercial air transport must have an appropriate authorisation from the pertinent foreign state(s). A foreign airline operator must receive Ministry permission in order to engage in commercial air transport to and from the Czech Republic.

A domestic airline operator is:

- a legal person headquartered in the Czech Republic whose shares and voting rights are at least 51 percent owned and controlled by domestic persons or by the Czech Republic who in addition exercise a decisive influence on management and fully control its activities, or
- a state company established for this purpose.

A domestic person is:

- a citizen of the Czech Republic, or
- a legal person located in the Czech Republic whose shares and voting rights are at least 51 percent owned and controlled by citizens of the Czech Republic or by legal persons located in the Czech Republic whose shares and voting rights are at least 51 percent owned and controlled by citizens of, or by legal persons located in, the Czech Republic.

A foreign airline operator may operate commercial air transport to and from the Czech Republic or on the territory of the Czech Republic on the basis of a Ministry authorisation. The Ministry may issue an authorisation if the requested commercial air transport complies with an international treaty, interests of the Czech Republic, and provided a foreign operator has:

- an authorisation to operate commercial air transport issued by a foreign state where the aircraft used to operate the transport are listed in an aviation register;
- a substantial part of property and control over it in the state where the aircraft used to operate the transport are listed in an aviation register;
- a paid-up aircraft liability insurance coverage; and
- a programme for protection against illegal acts.

The Ministry or the OCA may impose a fine of up to CZK 2 500 000 for infringement of regulations in civil aviation; for repeated breach of duties the fine may reach CZK five millions. Aviation personnel can be fined for breach of duties up to CZK 100 000. The subjective period for imposing the fine is two years (since the breach of duties was discovered); objective period is five years (since the day on which the duties were breached).

2. Competition

Economic competition in the Czech Republic is governed by the Act No. 63/1991 Coll. on the Protection of Economic Competition, as amended by subsequent regulations (Competition Act). The Competition Act protects economic competition against distortion through anti-competitive agreements, concentrations and abuse of a dominant position. This Act applies to all economic sectors without exception.

The Office for the Protection of Economic Competition (“Office”), the body responsible for support and protection of economic competition in the Czech Republic has not dealt yet with a merger in air transport.

The only air transport case so far dealt with by the Office arose out of suspicion that an airport operator had discriminated in favour of a particular airline (no demands for payment of certain costs). In that case, the product market was defined as a market of irregular air transport services (charter flights), and a group of children leaving for a sanatorium stay was defined as a special category of customers. Only this category of customers was granted special benefits by the airport operator, namely flying from a different terminal. There are no cities with more than one airport in the Czech Republic. One of the two terminals at the Airport Praha-Ruzyně is reserved for selected-chartered flights and special services.

The most significant Airline Company in the Czech Republic is České Aerolinie (ČSA). The Office has not handled yet any competition problem between ČSA and a competitive airline company.

Ground services are provided largely by companies not engaged in air transport. The Office advocated greater competition in connection with the privatisation of a company providing catering services, and secured changes which enabled another company to maintain a certain share of that market. Without the Office's intervention, ČSA would have had a monopoly position in these services at the Airport Praha-Ruzyně.

Considering the small area of the state, there has already been a shift in demand on the home transport market to the detriment of national air transport in connection with gradual building of motorways. There will also be a rise in inter-modal competition by rail transport as a result of construction of railway transport corridors.

DENMARK

1. Regulation of licensing and entry

(1.1) *EU's "Third Aviation Package" - i.e. Council Regulations 2407/92 (licensing), 2408/92 (market access) and 2409/92 (tariffs) - is in force in Denmark as in all 15 member states and in the EEA-countries Norway and Iceland.*

In accordance with the above-mentioned regulations, market access is in principle free for domestic operators and also for other EU/EEA-carriers - and therefore no limit exists for the number of domestic operators.

(1.2) *As mentioned in 1.1 there are in general no restrictions for international services inside the EU/EEA for EU/EEA-carriers.*

Operations between Denmark and third countries are regulated by the traditional ICAO system of bilateral Air Services Agreements (ASA). Denmark's around 100 such agreements varies from very liberal "open skies"-type agreements to agreements with very restrictive designation and capacity clauses. The Danish aviation policy is directed towards very liberal ASAs. If an ASA is very restrictive, the Scandinavian carrier SAS has preferential status – if this status is not utilised, another carrier could be designated. Usually, bilateral ASAs do not include the right to perform cabotage.

(1.3) *Tariffs in the EU are regulated through Council Regulation 2409/92 (tariffs). In general there are no restrictions on the airlines' setting of fares for travelling inside the EU/EEA, though authorities may under certain circumstances take action against too high or too low fares in accordance with Article 6 in Council regulation 2409/92.*

For operations between Denmark and third countries fares are regulated in the bilateral ASAs, fares are very seldom disapproved.

Regarding environmental restrictions EU-law is applicable in Denmark, e.g. directives on reduction of noise from subsonic airplanes and on hushkitted aircraft-engines. The rules for ownership of airlines are spelled out in the EU-regulations.

- (1.4) *There are no exemptions or exceptions in the application of Danish competition law to the airline industry. The Danish competition law accords with the competition Articles 81 and 82 in the EC-Treaty, and the EU competition regulations¹ on the airline industry are directly applicable to the Danish airline industry.*

The Danish Competition Council has the responsibility for enforcing national competition law in the airline industry.

2. Market definition

- (2.1) *The Danish Competition Council has so far treated just one case regarding a co-operation agreement between two aviation companies. This is the co-operation agreement between SAS and Cimber Air, which concerned four domestic routes from different cities in Jutland to Copenhagen.*

In connection with the handling of the case the Danish aviation market was mapped out and the markets identified.

In Denmark there are three main carriers SAS, Cimber Air and Mærsk Air, which serve eight domestic routes, excluding flights to Greenland and The Faroe Islands. The flights are mainly from the provinces in Jutland to Copenhagen. So the Danish market consists of eight city pairs.

In Denmark no city has more than one passenger airport, and the airports are not substitutes to each other. It is therefore not necessary to focus on airport pairs.

- (2.2) *In general the number of domestic airline passengers is small. In the case considered by the Danish competition authority, there was no reason to distinguish particular classes of customers as separate markets. To distinguish between classes of customers as separate markets can be relevant in international alliances, but not in the Danish domestic market, because of the small number of passengers.*

- (2.3) *In general the presence of these frequent flyer programmes (FFP) restricts competition. It influences the customers' choice of airline because FFPs are designed to ensure customer loyalty by offering various forms of bonuses or perks to customers for which customers save up each time they fly. If the existence of FFPs were prohibited globally, it would create a better foundation for fair competition between airlines. First of all the absence of FFP would lead to direct price competition and secondly it would lead to more transparency for the customers when buying tickets.*

SAS has a FFP – the SAS EURO bonus – it is a quite effective programme. Last year Mærsk Air entered a co-operation agreement with SAS to join the SAS Euro bonus. Hence the three main domestic carriers participate in the SAS FFP.

The Danish Competition Council is considering investigating the prevalence and use of travels incentive programs and direct negotiations with large customers.

- (2.4) *Since the opening of the Great Belt Bridge in June 1996 for train services and in June 1997 for motor vehicle services, the number of passenger travelling by plane across the country has decreased drastically, i.e. about 30 percent according to statistical information provided by the Danish Civil Aviation Administration. A copy of the statistics is enclosed.*

One airport on Funen, Odense airport, has closed in December 1998 and another airport in the southern part of Jutland, Vojens airport, is in the process of closing. In the western part of Jutland, Esbjerg airport too has severe difficulties.

Before the bridge was built, Funen and Zealand were connected by a frequent ferry route. The sailing time was one hour. The Great Belt Bridge has reduced the travelling time by train or motor vehicle from the provinces to Copenhagen, and as a result of this airlines now have strong competition from these other transport modes.

However, the airport placed in the northern part of Jutland, Ålborg airport, has not been affected by the opening of the bridge, because travellers can still save around two hours by taking the plane to Copenhagen, instead of the train or another motor vehicle.

Although airlines have been subject to strong competition, this hasn't had an effect on the prices in general, and the price for a domestic aeroplane ticket has not dropped significantly.

3. Barriers to entry, expansion and exit

- (3.1) *The Ministry of Transport states that the availability of airport slots is regulated by Council Regulation 95/93. There are no really severe congestion constraints in Danish airports or air space. Copenhagen airport has some peak hours, but it is has not caused serious problems when a new entrant has applied for take-off and landing slots.*

Expansion of services by existing carriers on international (non-EU/EEA) routes is prevented in cases where the Air Services Agreements in question dictate such restrictions.

- (3.2) *For the time being there has not been identified any new entrants for domestic routes. If an airline based in an EU-member state or EEA country would like to enter the Danish market and fly cabotage it is free to do so. As mentioned above there are no entry barriers such as slot restrictions or access to terminal facilities.*

As mentioned in 3.1 international carriers (non EU/EEA) are prevented by Air Services Agreements to enter new international routes, which means that establishment of new routes from Denmark to non EU or EEA countries depend on the individual bilateral Air Services Agreements.

- (3.3) *The Danish Competition Authority does not have access to the requested information.*

- (3.4) *The Danish domestic aviation transport market has not experienced predatory pricing. One reason why no new competitor has entered the market is the declining passenger market.*

Another reason could be that the three main domestic carriers are connected through domestic airline co-operation agreements like SAS and Cimber Air and Mærsk Air and SAS. These two separate and

independent co-operation agreements create a rather vigorous network, and this could keep new entrants from trying to enter the Danish domestic market.

The co-operation agreement between Mærsk Air and SAS has been notified to the European Commission. It has not yet been approved.

SAS, which is the Danish flag carrier, participates in the global STAR ALLIANCE and through this alliance SAS has multi-market contact. The other European carrier in the alliance is Lufthansa. When carriers enter a global or transatlantic alliance it is our experience that the competition seems to change to network competition among alliances instead of competition among the individual airlines within the alliance.

(3.5) *In Denmark we haven't experienced an asymmetry in the willingness to exit a market.*

When a carrier decides to give up a domestic route because of lack of passengers, the route is occasionally taken over by another carrier, having e.g. aeroplanes of a more suitable size and capacity and therefore capable of making the route profitable.

4. Competitive effects of mergers and alliances

(4.1) *The co-operation agreement between Cimber Air and SAS was notified in 1998. It concerns four domestic routes and four foreign routes within the EU-member states. In March this year the Danish Competition Council treated the case regarding the four domestic routes involved. The parties have also notified the agreement to the European Commission, which deals with cross-border routes involved.*

During the handling of this case some anti-competitive effects were identified, among other things that the alliance parties are the only two airlines flying on the common routes and co-operation between them will strengthen their position and remove potential competition between the parties. The co-operation agreement could create a barrier to entry for new competitors.

Also the participation in SAS' frequent flyer program can create customer loyalty and make it difficult for other competitors to enter.

The Danish Competition Council exempted the alliance subjected to conditions explained in 8.1.

The alliance has only been in effect for a couple of months - hence it is too early to judge its effects.

(4.2) *The Danish Competition Authority doesn't possess substantial material to answer this question.*

5. Efficiency benefits from alliances and mergers

(5.1) *Some of the efficiency benefits claimed in the domestic co-operation agreement between SAS and Cimber Air were:*

- a more efficient use of the companies' aeroplanes. For routes outside peak hours, Cimber Air's smaller planes with less seats are used;
- improved customer service, because of the possibility to plan and co-ordinate the companies' flight schedules so as to offer the customer greater choice ;
- customers benefit from the SAS frequent flyer program when flying with Cimber Air.

The Danish Competition Council was of the opinion that these benefits are credible.

(5.2) *International alliances often claim quite similar benefits as mentioned above plus make supplementary claims such as:*

- reduced costs because the alliance's partners often use the same ground handler at each of the alliance's hubs;
- reduced marketing costs because of mutual marketing and better distribution of an alliance's product;
- customers benefit from the network competition, because of a broader selection of flights and improvement in flight products;
- customers receive better service because of the presence of an alliance partner at a hub.

6. Competition issues at hub or dominated airports

(6.1) *Copenhagen airport (CHP) is a hub for SAS and the company is the dominant airline in CHP therefore SAS has a large share of the passengers travelling from Copenhagen.*

Regarding FFP, see the answer to question 2.3.

- (6.2) *It is difficult precisely to say which factors might erode the dominance of an airline at a single airport, but one factor could be that the airport also became the hub of another large airline.*

7. Competition issues in related services

- (7.1) *The Danish Competition Council hasn't treated cases where a group of airlines acquired a dominant position in the provision of related services such as ground handling services.*

For the time being there are three ground handlers in Copenhagen Airport, SAS, Novia Holding and Service Air. SAS's handling is a part of the SAS-group, Novia Holding is a Danish company owned by A P Møller and Servisair limited is a British company.

The dominant ground handler is SAS by virtue of SAS's self-handling of customers and flights and also thanks to SAS's handling of the STAR ALLIANCE partners.

Denmark has implemented Council Directive 96/67 of the 15 October 1996 on access to the groundhandling market at Community airports by Consolidation Act no. 933 of 9 December 1997 issued by the Minister of Transport.

The Consolidation Act permits self-handling in all the Danish commercial airports and it ensures independent ground handlers access to the market in Copenhagen Airport.

7.1 *The Danish Competition Authority performs various tasks according to the ground handling consolidation act:*

- ensures that the administration of central infrastructure is transparent, objective and non-discriminating;
- issues dispensations on the limitation of ground handlers in the airport;
- checks and ensures the provisions concerning separation of accounts and cross-subsidisation are respected;
- acts as a board of appeal for complaints about the decisions made by the airport administration regarding e.g. the charge for the use of airport facilities.

- (7.2) *The availability of airport slots is regulated by Council Regulation 95/93. This regulation ensures facilities such as slots and gates are allocated in a competitively neutral manner to the interested carriers.*

The Danish state has considered it necessary to accommodate possible future slots problems therefore Copenhagen airport is a fully co-ordinated airport in accordance with Article 3, section 3, *iii*) in Council Regulation 95/93.

A co-ordinated airport is an airport where a co-ordinator has been appointed to facilitate the operations of air carriers operating or intending to operate at the airport. Other Danish airports aren't co-ordinated.

To fulfil the Regulation's Article 4, all the airlines serving Copenhagen airport have established the "Airport Co-ordination Denmark" (ACD), which assists the Danish co-ordinator. The co-ordinator is independent from the airlines and is obliged to carry out his duties in an independent manner.

Where there are complaints about slot allocation the ACD shall consider the matter and may make proposals to the co-ordinator in an attempt to solve the problems.

If the problems cannot be resolved after consideration by the ACD, the Ministry of Transportation may provide for mediation by an air carriers representative organisation or other third party. Until now there hasn't been severe problems with slot allocations therefore it has not been considered, who should be the carriers representative organisation or the other third party.

(7.3) *In the Cimber Air and SAS co-operation agreement, the parties agreed that Cimber Air could use SAS's on the ground passenger services (check in service and traffic services). Cimber Air is not obliged to use SAS's airside handling.*

To ensure that the agreed provision does not restrict competition, the Danish Competition Council made it a condition for an exemption that the parties are free to choose their own ground handler.

8. Remedies

(8.1) *The Danish Competition Council exempted the co-operation agreement between Cimber Air and SAS because it had an overall positive effect, but the exemption was on certain conditions such as:*

- the possibility for other EU/EEA airlines lacking access to a FFP valid in several countries, to have access to SAS Euro Bonus when flying on the four domestic routes covered by the co-operation agreement;
- the parties to be free to choose their ground handler;
- if the co-operation between the parties is extended, they are obliged to report this to the Competition Authority.

As mentioned before in 4.1 the co-operation agreement has only been in force for a short period of time it is therefore difficult to say if the remedies are effective.

9. Other issues

- (9.1) *Until now the handling of airline cases has not involved co-operation with other national competition authorities.*
- (9.2) *In Denmark the Competition Council's decision can be appealed to the Competition Appeals Tribunal, which consists of three members: one Supreme Court Judge, another lawyer and one economist. The Tribunal reviews the decision of the Competition Council. Competition Appeals Tribunal decisions may be brought before a court of law within eight weeks.*

NOTE

1. Council Regulation (EEC) No 3975/87 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector, Council Regulation (EEC) No 3976/87 on the application of Article 85(3) [*now 81(3)*] of the Treaty to certain categories of agreements and concerted practices in the air transport sector, and Commission Regulation (EEC) No 1617/93 on the application of Article 85(3) [*now 81(3)*] of the Treaty to certain categories of agreements and concerted practices concerning joint planning and co-ordination of schedules, joint operations, consultations on passenger and cargo tariffs on scheduled air services and slot allocation at airports, amended by Commission Regulation (EC) No 1523/96 and by Commission Regulation (EC) No 1083/1999

ITALY

1. The regulatory regime for passenger air services

1.1 *Regulation of licensing*

The rules governing passenger air transport involving Italy are laid down in international agreements, European Community legislation and national regulation. Italy is a contracting party to the Chicago Convention of 7 December 1944 on international civil aviation¹. As a consequence, regulation of air navigation on its territory follows the rules adopted by the International Civil Aviation Organisation (ICAO) in respect of such aspects as routes, flight conduct, air traffic and safety.

The regulatory regime of passenger air services differs significantly with respect to domestic and intra-EU routes, on one hand, and extra-EU routes, on the other. The EU aviation market has been widely liberalised in recent years, while international air services from and to Italy remain subject to strict limitations provided by bilateral agreements between the Governments of the countries at each end of the route.

The granting by Italy of operating licenses to air carriers established in the Community is governed by the non-discrimination rules of Council Regulation No. 2407/92. According to Article 4 of the Regulation, only an undertaking whose main occupation is air transport and whose main place of business or registered office is located in a given Member State shall be granted an operating license by that Member State. The applicant undertaking must be owned directly or through majority ownership by Member States and/or nationals of Member States, and must be effectively controlled by such States or such nationals.² The same requirements must be met by any undertaking, which directly or indirectly participates in a controlling shareholding in the air carrier concerned.

Requirements for financial fitness are specified by Article 5 of the Regulation. The carrier applying for an operating license must be able to demonstrate, by means of a business plan for, at least, the first two years of operation and all relevant information, that:

- it can meet at any time its actual and potential obligations, established under realistic assumptions, for a period of 24 months from the start of operations; and
- it can meet its fixed and operational costs incurred from operations according to its business plan and established under realistic assumptions, for a period of three months from the start of operations, without taking into account any income from its operations”.

Member States are allowed to require, for the purpose of issuing an operating license, proof of the good reputation of the persons managing the operations of the undertaking, and availability of one or more aircraft, through ownership or any form of leasing agreement.

The applicant undertaking must be in possession of a valid air operator's certificate attesting that the operator has the necessary professional capacity and organisation to ensure operation of its aircraft's for the specified activities in conditions of safety.

Article 15 of the Regulation expressly provides that "the air carrier shall also respect the requirements of national law compatible with Community law".

If the granting of an operating licence has been unduly refused, the applicant may refer the question to the Commission and ask it to state its views on the correct interpretation of the Regulation.

1.2 Regulation of entry

1.2.1 Domestic and intra-community routes

Since 1 April 1997, passenger air services on domestic and intra-Community routes are subject to the same regulatory regime, *i.e.* the one established by Council Regulation No. 2408/92.

The rules provided for by this Regulation are based on the idea "that cabotage traffic rights are an integral part of the internal market" and that "it is necessary to abolish restrictions concerning multiple designation and fifth-freedom traffic rights and phase in cabotage rights in order to stimulate the development of the Community air transport sector and improve services for users".

The exercise of traffic rights is subject to "published Community, national, regional or local operational rules relating to safety, the protection of the environment and the allocation of slots" and may be limited or refused, on a non-discriminatory basis and temporarily, by the Member State responsible in case of serious congestion and/or environmental problems, "in particular when other modes of transport can provide satisfactory levels of service". An action taken on the ground of congestion and/or environmental problems may be brought before the Commission for examination and approval at the request of a Member State or on the Commission's own initiative.

No regulatory limits are imposed on the total number of competitors.

In Italy, the exercise of traffic rights granted by Regulation No. 2408/92 is only subject to notification to the competent authority. As a matter of fact, no authorisation procedure has been provided for.³

1.2.2 International routes

Air transport between Italy and extra-EU countries is still highly regulated and governed by bilateral agreements concluded by the Italian State with the States involved. Such agreements generally set destinations and frequencies and provide for the designation by the contracting States of the carriers (one for each party) entitled to operate scheduled flights, the sharing of capacity between the designated carriers on an equal basis, the approval of fares by the States and exclusivity on cabotage in favour of the national carrier.

In air services between Italy and non-EU countries, entry to the market is generally restricted to one operator for each State and, equal sharing of capacity between the two carriers. Fares are subject to approval by the public authorities of both sides.

Entry and expansion in international services by existing airlines are therefore rigidly limited.

As a rule, only carriers owned and controlled by nationals of the parties to a bilateral agreement can apply for the allotment of traffic rights for scheduled services established under the agreement.

By Decree of 16 April 1992, approving Agreement No. 4372 of 15 April 1992 concluded by the Italian State and Alitalia, Alitalia has been granted a ten year exclusive right to operate all of the non-EU scheduled air services. Other national air carriers may only operate the routes that have not been or are no longer effectively and regularly served by Alitalia (which consequently loses its exclusive right on those routes). As a matter of fact, in 1998 a few carriers other than Alitalia have been granted the exclusive right to operate some intercontinental routes (for example: Air Europe on routes from Rome/Milan to Kathmandu, Mogadishu, Baku, Kingston/Montego Bay, Mauritius; Lauda Air on routes from Rome/Milan to S.Domingo and Kuala Lumpur).⁴

Agreement No. 4372 has been revised by an Additional Act of 31 March 1999 in order to fulfil an undertaking given by the Italian State to the Commission on the occasion of the Commission's approval of a restructuring plan for Alitalia providing for large capital injections.⁵ Some provisions of the Additional Act have been criticised by the Italian Competition Authority as granting Alitalia some privileges distorting competition among national air carriers (such as the possibility to serve two non-EU routes with a single flight and an intermediate landing - for example Rome/HongKong via Milan -, or to operate a route by means of a code-sharing or a code-sharing/block space agreement with another carrier).⁶

An open sky agreement has been concluded on 11 November 1998 between Italy and USA providing for liberalisation in the determination of destinations, number of carriers, frequencies and fares in respect of the routes between the two countries. The execution of this agreement is conditional on the U.S. authorities granting antitrust immunity to the Alitalia-KLM-Northwest alliance. The Italian Competition Authority has invited the Italian Government to promote the execution of the agreement independently of the clearance of that alliance.⁷

1.3 Regulation of prices and ownership

Council Regulation No. 2409/92 on fares and rates for air services provides "the criteria and procedures to be applied for the establishment of fares and rates on air services for carriage wholly within the Community". These criteria and procedures are not applicable to fares and rates charged by air carriers other than Community air carriers⁸ nor to fares and rates established by public service obligation. In any case, "only Community air carriers shall be entitled to introduce new products or lower fares than the ones existing for identical products".

On the preliminary assumption that "air fares should normally be determined freely by market forces" and that "it is appropriate to complement price freedom with adequate safeguards for the interests of consumers and industry", Regulation No. 2409/92 provides that Community air carriers "freely set air fares"⁹, while charter fares¹⁰ and seat¹¹ rates, are to be set "by free agreement between the parties to the contract of carriage".

The Regulation allows Member States, provided that procedures established by the Regulation are complied with, to withdraw excessive basic fares¹² (in relation to the long term fully-allocated relevant costs of the air carrier including a satisfactory return on capital) or to intervene, on a non-discriminatory basis, against sustained downward developments of fares in a market, whether on a route or a group of routes. Decisions taken on these grounds are subject to the Commission's control.

1.4 *Ownership of airlines*

For the purpose of obtaining an operating licence by a Member State, an undertaking is required not only to have its main place of business or its registered office in that Member State, but also to be owned directly or through majority ownership by Member States and/or nationals of Member States, and must be effectively controlled by such States or such nationals¹³.

Article 5(3) of Council Regulation No. 2407/92 imposes on air carriers an obligation to keep licensing authorities informed so that they can monitor airline ownership. "An air carrier shall notify in advance to its licensing authority... any intended mergers or acquisitions and..., within fourteen days, of any change in the ownership of any single shareholding which represents ten percent or more of the total shareholding of the air carrier or of its parent or ultimate holding company".

1.5 *Regulation of airports and related services*

Most regulatory functions, such as evaluating capacity constraints, allocating slots and setting or assessing tariffs are currently performed by the Ministry of Transportation. However, responsibility for some important functions, such as setting airport charges, are shared with a number of other ministries, making the whole process particularly cumbersome and inflexible.

Currently, airports are operated under a licensing regime, which, in major airports, covers both the management of infrastructure and the provision of airport services. Licensees, which need not be chosen through competitive-bidding procedures, are assigned exclusive rights over the provision of airport services, including ground-handling services, and pay annual fees, related only to traffic movements, to the Ministry of Finance. Ground-handling services are being liberalised as a result of Council Directive No. 96/67 which has been transposed in Italy by the Legislative Decree No, 18/99.

Airport charges for landing, take-off and parking as well as passenger charges are strongly regulated and are set uniformly across the nation's airports, leaving virtually no room at all for discretion by airport operators. The level of charges, which is increased by 50 percent at night time, is mainly a function of aircraft weight at take-off but also depends on whether the flight is on a national or an international route.

Implementation of community Regulation 95/93 has led the government to declare 11 airports "fully-co-ordinate". However, previous assessments by the Ministry of Transportation found evidence of congestion, during limited periods of the day, only at the airports of Milano-Linate and Roma-Fiumicino. According to studies by private consultants, capacity constraints affected the number of runways in Milan and terminal space in Rome. The building of a new international passenger terminal is deemed to have removed the constraint in Rome, while the capacity of existing infrastructure in Linate has been recently expanded by a wide reorganisation of the airport's activities, which increased the number of slots available at peak periods.

Traditionally, the use of slots has been assigned to airlines according to historical precedence (so-called "grandfather rights"), while residual property rights were implicitly retained by the state. As a result, the flag carrier (and its smaller affiliates), which prior to European liberalisation used to monopolise national and international routes, holds a very high share of slots in major Italian airports, reaching 55/60 per cent in Milan and Rome.

In the last few years, Italy has been slowly adjusting to EC Regulation No. 95/93, which has provided the framework for slot allocation in EU airports. In 1994 a number of airports were designated as fully-co-ordinate and national and local airport co-ordination committees were created. They are composed of the clearance co-ordinator, representatives of the Ministry of Transportation, air traffic control officials, airport operators, and national and international airlines. The procedures defined by the European Regulation consist in the designation of an independent clearance co-ordinator, the effective monitoring of slot usage in order to apply the so-called use-or-lose rule, the creation of a slot pool (including slots made available by expansion or reorganisation of existing capacity, slots withdrawn from incumbents due to insufficient use and slots voluntarily surrendered by incumbents) and the assignment by the clearance co-ordinator of at least 50 percent of newly available slots to new entrants.

Until recently, the Ministry of Transportation assigned to the flag carrier (Alitalia) the duty to perform clearance activities (*see* the case *Alitalia 1996* in section II). Alitalia in turn designated as co-ordinator one of its employees. Currently the clearance activity is performed by Assoclearance, an association formed by airport operating companies and national carriers.

Although not explicitly forbidden, no market in buying or leasing Italian airport slots has ever arisen. So far, the clearance co-ordinator has been responsible for slot swaps (such as allocation of re-timed historic rights), which by the way have been quite rare.

2. Competition analysis

There are no exemptions or exceptions in the application of national competition law to the airline industry.

The Italian Competition Authority conducted a competition analysis of air transport services in several cases. In the following subsections the main issues involved in this analysis are dealt with by providing short summaries of the leading decisions of the Italian Competition Authority.

2.1 Abuse of dominant position of Alitalia on the Roma-Milano Route

The Italian Competition Authority faced the task of defining the relevant markets for air transport services in several cases. Usually markets have been defined by direct flights connecting two cities, however in one case the Authority found that the correct definition was given by an airport-pair market. The case concerned an alleged abuse of dominant position by Alitalia, the national flag carrier, on the Roma Fiumicino-Milano Linate route. The Authority considered this route as a distinct relevant market, noting that users could hardly substitute Milano-Linate with Milano-Malpensa airports, due *inter alia* to the considerable distance between Malpensa and the centre of Milan and the lack of adequate links between the two airports. Notwithstanding the relatively short distance between Rome and Milan (497 km), the Authority dismissed also the possibility that railway services could constitute an effective substitute to air transport as the two services differ greatly as to prices, travel time, and service frequency.

In the period January-June 1993 Alitalia had routinely cancelled flights to below the number scheduled for the route concerned, only a very small number of the cancelled flights being due to weather conditions or causes independent of the operational choices of the airline. It turned out that, due to cancellations by Alitalia, slots that could have been filled by other companies remained unused. The investigation concluded that Alitalia abused its dominant position by restricting the range of services on offer and impeding access to the market by competing airlines, to the detriment of consumers.

As a result, Alitalia rescheduled weekly flights on that particular route increasing their number by 35 percent and spreading daily services more evenly over time. At the same time, the Ministry of Transport brought into full application at Linate Airport the provisions of EC Regulation No. 95/1993 governing the allocation of time bands in Community airports, and laying down rules to allocate to new market entrants any slots which were not being adequately used by incumbents.

2.2 *Alitalia 1996*

The Italian Competition Authority ascertained that several factors might form barriers to entry for new firms or of expansion and exit for existing firms. They include network effects, computer reservation systems, restricted access to airport slots, customer loyalty schemes. Shortage of slots is probably the most important constraint to the expansion of competition in the most lucrative markets, which could attract new competitors.

In November 1996 the Authority completed an investigation of Alitalia, which was alleged to have abused its dominant position through the discriminatory use of its power to allocate takeoff and landing slots, reacting to competitors moves by resetting its own schedules anticipating by a few minutes those of competing companies, forcing them out of the market.

The Community Regulation No. 95/93, governing the allocation of slots for takeoff and landing, explicitly refers to the principle that the co-ordinator supervising the allocation of slots (airport clearance) must be able to act with total impartiality as a third party. In Italy, however, the implementation of Community regulations was incomplete, since Alitalia had been given the role of clearance co-ordinator for all national airports. The Authority found that in performing its co-ordinator duties, Alitalia had adopted strategies to conserve and consolidate its own position on the domestic market by obstructing the entry of new competitors. In the course of the investigation Alitalia gave up its role as clearance co-ordinator. The Ministry is currently envisaging the creation of an independent agency responsible for clearance at fully-co-ordinate airports.

With regard to the overlapping in some routes of Alitalia's departure times with those of the new competitors Aliadriatica and Meridiana, the investigation showed that both these competitor airlines had suffered significant economic damage to the extent of being forced to exit some of the routes. The Authority argued that small air carriers did not have the logistics to promptly react to such aggressive strategies, nor were they able to easily alter their landing and take off slots. Furthermore smaller airlines would bear significant losses in terms of advertising expenses and travel agents' informational efforts, if they decided to reschedule their flights. Finally the authority believed that such moves by Alitalia were also a signalling device to potential new entrants in the Italian air transport market that Alitalia would not remain passive, in the face of new entry.

Another important factor that might make it difficult for new firms to enter or expand in a market is access to travel agents and to the computer reservation systems.

In the above mentioned case, the Italian Competition Authority proved that when Aliadriatica began flying on certain routes, Alitalia sent notices warning the travel agencies not to issue tickets for the competitor company using the Alitalia mechanical or manual ticketing systems. Since the travel agencies only possessed tickets carrying the Alitalia identification code, these instructions prevented Aliadriatica from expanding its service, which was highly damaging both to the company and to its customers.

The Authority concluded that Alitalia had abused its dominant position violating section 3 of the Act. Considering the gravity and the duration of the offences, it fined the company 450 million lire (one percent of turnover).

2.3 *Alitalia/Meridiana and Alitalia/Minerva*

In January 1999 the Authority completed two investigations into code-sharing and franchising agreements signed by Alitalia and two other Italian airline companies, Meridiana and Minerva. In both cases the investigation followed a notification by Alitalia in which the Authority was asked to verify that the agreements were not anti-competitive and, failing that, to grant an exemption.

In the first case, in view of the commercial co-ordination deriving from code-sharing, the Authority found that the agreements would result in a reduction in competition, both on the routes where Alitalia and Meridiana actually competed, owing to the change from a situation marked by the presence of two independent carriers to one of monopoly, and on the routes where they were found to be potential competitors, since the fleet of the two carriers would allow them to operate on both types of route.

The Authority did not find the conditions necessary for granting an exemption, either in terms of an improvement in the service supplied under the agreement (since it had not resulted in the addition of new routes or increased flight frequency) or in terms of benefits to business or tourist users (the agreement in fact had led to a substantial increase in fares on the routes concerned).

The Authority accordingly concluded that the agreement between Alitalia and Meridiana had the object and the effect of substantially hindering competition in violation of the prohibition contained in Article 2 of Law No. 287/1990 and rejected the request for it to be exempted under Article 4 of the same law. The decision has been annulled by the First degree Administrative Court on the grounds that the Competition Authority had not sufficiently proved that the code-sharing agreement would create anti-competitive effects on the relevant markets concerned.

In the second case, the agreement provided for the co-ordination of the two companies' scheduled flights on all the routes operated by Minerva and for Alitalia to grant Minerva its trademark and give support in the form of distribution structures in a manner typical of franchising agreements between airlines. The flights of the combined network were to be marketed and advertised under the AZ label and provision was made for some routes to be operated on a code-sharing basis.

The fact that the franchising agreement covered all of Minerva's operations and resulted in its fare schedule being integrated with Alitalia's was deemed to imply the elimination of potential competition between Alitalia and Minerva in the markets concerned. The Authority therefore concluded that the object of the agreement between Alitalia and Minerva was to create a substantial obstacle to competition in violation of the prohibition contained in Article 2 of Law No. 287/1990.

As regards the request for the agreement to be exempted under Article 4 of the same law, the Authority concluded that the parties to the agreement had supplied sufficient evidence to show that the conditions for exemption were fulfilled since the agreement was found to have brought benefits, in terms of both increased supply and cost reductions, that, at least in part, had been passed on to customers.

The Authority accordingly decided to authorise the agreement until 31 January 2001. Three years (equal to the minimum contractual duration of the agreement) had been indicated by Minerva as the minimum lapse of time needed to recover the investments made to upgrade its services to the standard required by Alitalia and to achieve the benefits referred to above.

NOTES

1. The Convention has been approved in Italy by Legislative Decree n. 616 of 6 Mars 1948.
2. Without prejudice to agreements and conventions to which the Community is a contracting party (Article 4(2)).
3. Ministerial Circular No. 332910 of 28 February 1997 on new procedures for access to intra-community routes.
4. Also Eurofly and Alitalia Team have been granted the right to operate on three other intercontinental routes - to Columbus, Malè (Maldives) and Mahè Island (Seychelles) - but they are controlled by Alitalia.
5. See Commission Decision 97/789/EC of 15 July 1997 concerning the recapitalisation of the company Alitalia (O.J. L 322, 25/11/1997, p. 44).
6. torità Garante della Concorrenza e del Mercato, recommendation of 2 July 1999 on the regulation of scheduled air services to and from non-EU countries, *Bollettino* No. 24/99.
7. See footnote 18.
8. According to the definition given by the Regulation "Community air carriers" are air carriers "*with a valid operating licence issued by a Member State in accordance with Council Regulation (EEC) No. 2407/92*".
9. According to the definition given by the Regulation, "air fares" are "*the prices ... to be paid by passengers to air carriers or their agents for the carriage of them and for the carriage of their baggage on air services and any conditions under which those prices apply, including remuneration and conditions offered to agency and other auxiliary services*".
10. According to the definition given by the Regulation, "charter fares" are "*the prices ... to be paid by passengers to charterers for services which constitute or include their carriage and the carriage of their baggage on air services and any conditions under which those prices apply, including remuneration and conditions offered to agency or other auxiliary services*".
11. According to the definition given by the Regulation, "seat rates" are "*the prices ... to be paid by charterers to air carriers for the carriage on air services of the charterer or its customers and their baggage and any conditions under which those prices apply, including remuneration and conditions offered to agency and other auxiliary services*".
12. According to the definition given by the Regulation, "basic fares" are "*the lowest fully flexible fare, available on a one way and return basis, which is given for sale at least to the same extent as that of any other fully flexible fare offered on the same air service*".
13. Article 4 of Council Regulation No. 2407/92.

JAPAN

1. Introduction

There have been certain changes in Japan's airline industry with the recent progress in deregulation.

2. The current situation of Japan's airline industry

Japan's airline service had long been provided by three major airlines -- All Nippon Airways, Japan Airlines and Japan Air System -- and their subsidiaries. However, two new airlines have recently started operations on some domestic routes.

Japan's domestic airline network has Haneda Airport and Itami Airport as its hubs. Therefore, it is important for those who plan to launch domestic airline businesses in Japan to secure slots at Haneda Airport and Itami Airport. However, there were not enough slots at Haneda Airport and Itami Airport therefore, it was difficult for new airlines to secure sufficient slots at the airports. Recently, the situation has been improved.

3. Airline business regulations and deregulation

3.1 *Regulations on new entry*

Under the current Civil Aeronautics Law, those who want to operate an airline must obtain a license from the Minister of Transport on each route. Those who apply for such licences must describe their business plan in the application form and submit it to the Minister. The law requires the Minister to take supply-demand balance and other elements into consideration in examining applications for licences.

However, the clause requiring adjustment of the supply-demand balance was deleted from the Civil Aeronautics Law when it was amended in 1999. Moreover, under the revisions, the requirement for a licence on each route was replaced by that for permission for each kind of business (The new system will come into force in February 2000).

Under the bilateral air services agreements, foreign air carriers are required to be designated by their countries as new entrants in international services before they start their operations to/from Japan.

3.2 *Regulations on fares*

The current Civil Aeronautics Law requires airline operators to determine the fares and charges for passenger and cargo transportation, which must be approved by the Minister.

However, the amendment of the Act in 1994 has enabled airlines to give a discount of up to 50 percent on their airfares or charges, if they notify the Minister of the discount in advance.

With the deregulation on air fares to be enforced under the 1999 amendment of the Civil Aeronautics Law, the regulation on fares and charges of domestic airline transportation is going to be transformed into the prior notification system (The new system will come into force in February 2000.).

Under the Civil Aeronautics Law, foreign international air carriers are required to obtain approvals on their fares, rates, tariffs and charges from the Minister as are Japanese air carriers.

3.3 *Air carrier ownership and control*

Under the Civil Aeronautics Law, the chief executive officers and more than two-thirds of the board members of Japanese air carriers must be Japanese citizens and more than two-thirds of voting stocks of them should be held by Japanese citizens or Japanese judicial persons.

3.4 *Extension in services*

The routes and frequencies are subject to the conclusions of consultations between the aeronautical authorities of Japan and the country concerned under the bilateral air services agreements. In addition, under the Civil Aeronautics Law, foreign air carriers are prohibited to provide transport services between any pair of points in Japan.

3.5 *Other regulations*

Furthermore, necessary regulations have been in force from the viewpoint of safety and other factors in the Aviation industry.

4. Other barriers to entry

4.1 *Limited slots*

Haneda Airport and Itami Airport, are the hubs of Japan's domestic airline network. However, since slots were limited because of limited capacity of the airports, it had been difficult for airlines to obtain new slots.

But some measures have thus been taken in order to promote new entrants. For example, when slots were allocated on the occasion of the opening of a new runway at Haneda Airport in FY1996 and 1997, a certain numbers of slots were allocated for new operators.

With the revision of the Civil Aeronautics Law in 1999, a new system has been introduced. Under the system, slots at heavily congested airports designated by the Minister will be allocated over a certain period (up to five years). The slot allocation policy is as follows:

- so-called "assessment method" shall be adopted with priority;

- slots shall be allocated to new entrants with priority.

However in an actual case, when allocation becomes necessary owing to increases in slots and other factors, how to allocate slots will be considered in regard to the situation of individual airports.

4.2 Capacity to service aircraft

Domestic airline service has long been provided by the three major carriers. Aircraft servicing and other supplementary ground services have been provided by these major carriers and their subsidiaries.

As for new entrants, they may (1) contract aircraft servicing to existing domestic carriers, or (2) to foreign service providers, or (3) alternatively service the aircraft themselves.

5 Relations between regulatory agencies and the Competition Agency

The Anti-Monopoly Act (“AMA”) does not apply to agreements on joint operations aimed at maintaining domestic routes that are indispensable for the life of residents and for agreements on flight connections, air fares or other factors relating to international flights.

Airline operators that want to conclude or amend the above-mentioned agreements must obtain permission from the Minister. The Minister must not approve the agreements unless they meet the legal requirements¹.

The Minister must consult the Fair Trade Commission (FTC) when he/she intends to approve the above-mentioned agreements on domestic routes. In cases where the FTC finds that the contents of an agreement approved by the Minister no longer meet the conditions for approval, it may request the Minister to order an amendment to the agreement or revoke the approval.

When the Minister approves the above-mentioned agreements in international routes, he/she must notify the FTC of the decision. In cases where the FTC finds that the contents of an agreement approved by the transport Minister no longer meet the conditions for approval, it may request the Minister to order an amendment to the agreement or revoke the approval.

In the fields that are not exempted from application of the AMA, the law can be applied. The FTC deals with the anti-competitive activities.

6. Major topics on competition in Japan’s airline industry

6.1 Alliances in the aviation industry

The following are examples of business alliances in Japan's airline industry:

- Japan Airlines and Japan Air System have announced that they will create a common system on (i) reservations for seats, (ii) reservations for domestic package tours and (iii) ticketing, by establishing a joint venture which will manage the system and start operations by 2001 in order to reduce costs;

- in regard to international routes, All Nippon Airways is going to join the Star Alliance, a world-wide alliance among eight major airlines including United Airlines and Lufthansa on October 31, 1999 and it has already begun certain types of business alliances such as FFP.

6.2. *Deregulation and diversification of air fares*

“Measures of Promotion of Administrative Reform in the Future” (Cabinet Decision in February 1994), recommended that, with regard to the introduction of some types of airfares, the approval system should be changed to a notification system in order to ensure airlines act independently and to introduce market mechanisms to the industry -- even though airlines were at the time required to have all of their airfares approved by the Minister. In response to the recommendation, the Civil Aeronautics Law was revised to allow airlines to introduce airfares with up to 50 percent discount, merely by notifying the Minister (December 1994).

Since 1995, the domestic carriers have introduced discount tickets for those who purchase tickets in advance; for example, tickets would be discounted up to 36 percent for those who buy tickets 28 days or more prior to their departure. Such deregulation has promoted reduction and diversification of airfares.

6.3 *New airlines and their influence on air fares*

As mentioned in Part I, domestic airline service had long been provided by All Nippon Airways, Japan Airlines and Japan Air System as well as their subsidiaries. However, two new carriers -- Skymark Airlines and Hokkaido International Airlines (Air Do) -- entered into four domestic routes (Tokyo-Fukuoka, Tokyo-Sapporo, Fukuoka-Itami, Itami-Sapporo) following the expansion of slots at Haneda Airport in 1998 and 1999. Moreover, on the four domestic routes, competition has been promoted. These two airlines entered into each of the routes with fares half those set by the incumbent three major carriers through low-cost operation which includes trimmed flight services. Later, the three major carriers set almost the same fares, subject to certain conditions such as the limitation zone. Thus, the new carriers' entry has had a substantial impact on the airfares on these four domestic routes, which is deemed to be the effect of promoting competition through new entry. (Table: Airfares over the past two years)

Route	Date	Carriers	Normal Fare (yen)	Discount Fare (yen)	
				Discount on Preliminary purchase	Discount in specified flight (the number of discount flights/the number of all flights)
Tokyo -Fukuoka	April 1998	JAL	27.400	13.700	(2/24)
		ANA			21.900(2/24)
		JAS			(1/20)
	September 1998	JAL	27.400	13.700	(1/24)
		ANA			19.200(1/24)
		JAS			(1/20)
		SKY			
	March 1999	JAL	27.400	13.700	(13/24)
		ANA			13.700(1/24)
		JAS			(9/20)
SKY					

Route	Date	Carriers	Normal Fare (yen)	Discount Fare (yen)	
				Discount on Preliminary purchase	Discount in specified flight (the number of discount flights/the number of all flights)
	June 1999	JAL	27.050	13.550	(17/24)
		ANA			13.700 (8/24)
		JAS			(15/20)
		SKY			
	September 1999	JAL	27.050	17.600	(13/24)
		ANA			16.000 (2/24)
		JAS			(11/20)
		SKY			16.000
Tokyo -Sapporo	April 1998	JAL	25.000	12.500	(3/24)
		ANA			20.000(3/26)
		JAS			(4/22)
	December 1998	JAL	25.000	12.350	(4/24)
		ANA			20.000(4/26)
		JAS			(4/22)
		ADO			16.000
	March 1999	JAL	25.000	12.350	(12/24)
		ANA			17.000 (12/26)
		JAS			(12/22)
		ADO			16.000
	June 1999	JAL	24.700	12.350	(12/26)
		ANA			16.000(12/28)
		JAS			(12/22)
		ADO			16.000
	September 1999	JAL	24.700	16.050	(17/26)
		ANA			16.000(17/28)
		JAS			(16/22)
		ADO			16.000
	Osaka -Fukuoka	April 1998	JAL	16.000	8.000
ANA			12.800(2/8)		
JAS			7.850 (5/6)		
April 1999		JAL	15.800	7.900	(4/10)
		ANA			12.650(5/8)
		JAS			(4/6)
		SKY			10.000
June 1999		JAL	15.800	7.900	11.000 (all)
		ANA			
		JAS			
		SKY			10.000

Route	Date	Carriers	Normal Fare (yen)	Discount Fare (yen)	
				Discount on Preliminary purchase	Discount in specified flight (the number of discount flights/the number of all flights)
	September 1999	JAL	15.800	10.250	11.000 (all)
		ANA			
		JAS			
		SKY	10.000		
Osaka -Sapporo	April 1998	JAL	31.250	15.650	
		ANA			
		JAS			
	April 1999	JAL	30.850	15.450	
		ANA			
		JAS			
		SKY	21.000		
	June 1999	JAL	30.850	15.450	21.000(all)
		ANA			
		JAS			
		SKY	21.000		
	September 1999	JAL	30.850	20.050	21.000(all)
		ANA			
		JAS			
		SKY	21.000		

Notes:

1. Japan Airlines All Nippon Airways Japan Air System
Skymark Airlines entered the market on September 1998.
Air Do: Hokkaido International Airlines entered the market on December 1998.
2. "Discount on Preliminary Purchase" (the number of discount flights/the number of all flights) indicates number of flights which is discounted excluding early morning and midnight.
3. Skymark Airlines entered the market on April 1999.
- 4: "Osaka" includes Kansai International Airport and Itami Airport.

NOTE

1. Conditions for approving and amending agreements -- that are not subject to the Anti-Monopoly Act -- are as follows (Article 110 of the Civil Aviation Law):
 - the agreements must not unfairly infringe on benefits to customers;
 - they must not be unfairly discriminatory;
 - they must not unfairly restrict affiliation and withdrawal;
 - they must be kept to the minimum level in light of their aim.

MEXICO

1. Summary of the regulatory regime for air services

1.1 Regulation of licensing and entry

(1.1) *What are the regulatory restrictions (if any) on new domestic entry? What licensing requirements exist? Are their limits on the total number of domestic competitors?*

Air transport of passengers, cargo and mail in Mexico require government concessions or permits. The regulatory base for such requirements are established by Mexico's Law of Civil Aviation (May 1997) and its Regulations (*Reglamento*). The Law gives the Ministry of Communications and Transportation the powers to conduct air transport policies, grant concessions and permits, issue safety standards among others.

The Law distinguishes among the following service categories: regular (scheduled), non-regular (non-scheduled), national and international services. There is an additional category for commercial private service. Non regular services include air taxi, chartered flights, specialised services (fire extinction, spraying, parachuting, air surveying, and other) and recreational. According to the Law, concessions are required for providing regular domestic services; the provision of all other services requires a permit.

Only Mexican firms can apply for concessions to scheduled national services for passenger transportation. To obtain a concession, the applicant must fulfil a number of technical, financial, legal and operational requirements. The concession is for 30 years and can be extended. In concessions and permits alike authorisation is required to operate, add or expand routes as well as for time schedules. An airline firm that obtains a concession is also to comply with additional requirements to start operations.

The law allows for some discretionary assessment of the financial aspects of the three years investment program submitted by the applicant to the concession. A stronger discretionary element is contained in Article 25 of the Law, which establishes that in granting concessions or permits, the authority will take into account criteria to promote effective competition, the permanence, the quality and the efficiency of the services, as well as the development of air transport services. The term 60; permanence 61; gives the regulator the possibility of judging the economic profitability and other aspects to decide on whether to grant a concession.

There is no legal limit to the number of domestic competitors.

(1.2) *What restrictions exist on the provision of international services? What restrictions exist on existing airlines in the expansion of international services? What restrictions exist on new entry in international services? Can international airlines provide domestic services (such as "cabotage")?*

National and foreign airlines require authorisation of routes and time tables for international services (scheduled) in addition to the conditions established by bilateral aviation agreements. In the case of countries with which no such agreements exist, the Mexican authority can grant permits unilaterally. The agreements usually limit the number of routes and companies that can fly to and from international destinations. The Ministry of Transportation and Communications has discretionary power to grant air freedom, not cabotage, to foreign airlines.

Chartered services operating international routes require authorisation of routes. The Law requires that such services should never become "equivalent" to those of scheduled airlines and should only "complement" the latter. This bias in favour of scheduled services is important, since chartered flights compete with scheduled services, especially in tourist destinations. Neither the Law nor its Regulations specify when such equivalence and complementarity are reached.

Only Mexican airlines can operate regular air transport routes within the national territory. No cabotage is permitted to foreign airlines, so Mexican airlines are protected from foreign competition.

(1.3) Are their limits on the prices or terms of conditions that airlines can offer? Are their restrictions (e.g., for environmental reasons) on the types of planes that can be flown or the types of services that can be offered that might have competition implications? Are there controls on the ownership of airlines? If so, please explain.

The Law of Civil Aviation establishes that prices will be set freely by the market, yet airline companies are obliged to provide services under conditions of safety and quality. However prices can be regulated when conditions of effective competition are lacking. The absence of such conditions shall be determined by the Federal Competition Commission and the regulator will impose price controls until competition is restored. So far, regulations do not impose restrictions, environmental or otherwise, on the types of planes that can be operated, except in what refers to quality of service, although a set of norms will be instated in the near future.

There are controls on the foreign ownership of airlines, established by Mexico's Law of Foreign Investments. This law limits the voting ownership of national airlines of foreign investors to 25 percent. The law, however, allows for foreign ownership above the 25 percent limit if investment is done through firms where foreign investment is less than 50 percent of voting stock. According to Mexican Law on foreign investment such a company is defined as national, and foreign investment in other ventures is not to be computed as part of foreign investment. Foreigners can own 49 percent of Company B and 25 percent of an airline, and company B can own the remaining 75 percent of the national airline. In this example, total foreign investment in the national airline will be counted as 25 percent. So foreign airlines can "jump the barrier".

(1.4) Are there exemptions or exceptions in the application of competition law to the airline industry (such as an exemption for international air agreements)? If so, please explain. Who has primary responsibility for enforcing competition law in this sector -- the competition authority, a sectoral regulator, or some combination? If jurisdiction is shared, how are conflicts resolved?

The Federal Competition Commission is the enforcing authority of competition laws in all-economic activities, including air transport. The Commission can object to mergers or any concentration with potential anti-competitive consequences, as well as to prosecute absolute monopolistic practices (such as price fixing and bid-rigging) or relative monopolistic practices (discrimination, undue displacement of competitors) in the case of agents with substantial market power. The Ministry of Communications and

Transport is the authority in charge of imposing price regulations or other controls when there is market abuse on particular routes. The Federal Competition Commission, however, is the only authority empowered to take action against anti-competitive conduct. It can impose sanctions and/or issue orders to cease illegal practices.

An example is the case of 26 national routes on which the Commission found that prices were excessive and asked the Air Transport authority to establish price controls. In another case, the Commission directly intervened to force the two major airlines to reverse their unilateral reduction in commissions paid to travel agencies and to make restitution for sums already withheld.

2. Competition analysis market definition

(2.1) *In analysing competition issues in the airline industry, what air transport services markets have you identified? How did you make that determination? Most countries focus on "city-pair" markets, but for cities with more than one airport, these airports may not be viewed as close substitutes from the perspective of travellers -- for which cases is it more appropriate to focus on "airport-pair " markets?*

In analysing competition issues the Federal Competition Commission defines passenger transportation in scheduled airlines and charter services as the relevant transport service. Each route, or city pair, is defined as a specific relevant market, since all Mexican destinations involve only one airport in each city.

(2.2) *Airlines typically seek to distinguish between many classes of customers. In your analysis which classes of consumers have you distinguished as separate markets? How did you arrive at that determination? Were your competition concerns focused on a particular class of consumer (such as time-sensitive business travellers?) Did you distinguish non-stop as a separate market from other connecting services?*

The Commission has so far not based its analyses on different classes of consumers. There are, however, separate types of markets in the case of so-called trunk versus feeder airlines. This stems from the fact that all the major domestic routes are controlled by the two largest airlines and three feeder airlines controlled by the same holding company (accounting for 70 percent of the total number of passengers on domestic routes). Their smaller competitors are mainly found in the less densely travelled routes. A third type of carrier is the Charter Company, which fly a sizeable volume of passengers to tourist resort destinations.

(2.3) *Airlines also seek to lower the elasticity of demand for their services through loyalty programs such as frequent-flyer programs, travel-agent incentive programs, or through direct negotiation with large customers. Are such programs important in your country? Have they materially changed the nature of demand for certain airlines, particularly at "hub " airports?*

Practically all scheduled airlines in Mexico, feeder or trunk, have loyalty programs such as frequent flyer. We do not know how prevalent other programs, such as incentives to travel agents of direct offers to large customers, are. We do not know either the extent to which such programs have changed demand, except for the general notion that the two largest airlines have the advantage of offering many more destinations as well as first class service.

Mexico City's airport, as the largest in the country, has some analogous characteristics of airports where airlines have "hubs". Mexico City's airport can be considered as a hub site for national airlines with international flights. It does not have, however, the geographic characteristics of a location that feeds traffic to distant national destinations. A large part of the traffic to and from Mexico City is explained by population size.

- (2.4) *To what extent does inter-modal competition (such as high-speed train service) discipline airline pricing? Does the level of competition (intra-modal or inter-modal) vary in a systematic way with the distance travelled?*

There are no transportation modes in Mexico that can be close substitutes to air transport. The main mode of ground transportation is the bus, with much lower prices per passenger mile than air transport.

There are no high-speed trains or similar transport systems in Mexico.

3. *Barriers to entry, expansion and exit*

- (3.1) *For a given route, are there barriers or restrictions that prevent an expansion of services by existing carriers (such as constraints on the availability of take-off and landing slots)? In the case of international routes, do international agreements prevent an expansion in services by existing carriers? If so, please explain.*

There are no airports with slot constraints in Mexico. The only airport that shows some congestion and is expected to become saturated by 2004 is Mexico City's. There are however "grandfather" rights that give the two largest and oldest airlines a significant competitive advantage in that airport, and regulations on the allocation of slots have been insufficient to give equal opportunity to smaller competitors.

Mexico's airports are being divested to the private sector in regional packages and will operate under a Regulation that contemplates limiting the number of slots that airlines can hold at congested hours. In these cases slot rights return to the airport authority to be offered through bids to other competitors. The Regulation contemplates procedures to sanction airports when facilities become insufficient due to lack of investment. Basic airport fees are regulated.

- (3.2) *For a given route, which airlines have you identified as the most likely potential entrants? Is new entry (on a given route) restricted due to restricted access to slots, terminal facilities, ground-handling facilities, computer reservation services, or some other reason? To what extent is new entry on international routes restricted by international agreement?*

The highest density, most attractive routes originating or terminating in Mexico City, especially those to tourist resorts. The most likely potential entrants on dense routes are smaller competitors, which so far have attracted first time air passengers in less dense routes or routes to the northern border. There are space and facility limitations at Mexico City's airport that might restrict entry. Building a new airport in the Mexico City area has been under discussion for decades. There are slow procedures that restrict entry of smaller competitors to international destinations, by far the most important being US destinations.

- (3.3) *Airlines can often lease aircraft, terminal services and computer reservations services. What are the most important sources of sunk costs of entry? What is the magnitude of these sunk costs?*

Research has established that there are no scale economies in passenger air transport, such that an airline with few aircraft (less than ten) can be highly profitable in low price no frill services. This gives an order of magnitude of the costs of entry. For new entrants, promotions, marketing and distribution (facilities for ticket sales) expenses are the most important sunk costs, especially in expanding operations to higher price services. Obtaining entry to Mexico City's airport, as mentioned in 3.2, can be difficult, and so far regulations do not have clear rules on the possibility of airlines building their own facilities.

- (3.4) *To what extent is the threat of predatory pricing a deterrent to new entry or to vigorous competition? Is the prevention of predatory pricing ex post (i.e., after a merger has been approved) of more-than-average difficulty in the airline industry (because, for example, of the ease with which airlines can increase the number of discount seats)? Does the existence of multi-market contact between airlines affect the extent of competition between them?*

Mexican competition law provisions on predation require that the responsible carrier have substantial power on the relevant market. The Commission so far has not faced predatory practices or similar strategies on the part of the dominant carrier. It has instead investigated cases of excessive prices on specific routes where there is only one carrier or a very high level of market concentration. The Commission maintains a systematic watch over the reservation systems to prevent discrimination by the dominant carrier against smaller competitors.

- (3.5) *Is there an asymmetry in the willingness to exit a market between a hub-and-spoke operator and a regional feeder or "point-to-point" airline (because the loss of a spoke on a hub-and-spoke network may reduce the traffic and therefore the profitability of the remaining network)?*

These strategies have not occurred in Mexico, given the size of airline route structure, where there is at most one destination close to the definition of a hub.

4. Competitive effects of mergers and alliances

- (4.1) *In considering airline mergers and alliances have you sought to quantify the anti-competitive effects? What anti-competitive effects were forecast? Were the forecasts accurate?*

In 1993, the Ministry of Communications and Transport authorised Aeromexico to purchase control of Mexican, on condition that they remained competitors, and to submit the case to the authorisation of the Federal Competition Commission, which was instated later that year. In 1995 the Commission subjected a new transaction involving those airlines and other economic agents, to the following conditions: (i) the holding company of the airlines resulting from the transaction, would exist for a limited period of time, as a financial entity restricted to carry out a financial restructuring of the airline companies; (ii) the subsidiary airlines should remain as competitors during the existence of the holding company, and (iii) an independent auditor would verify that the holding company and its subsidiaries would abide by the conditions imposed by the Commission. This situation of a temporary merger prevails to the present. That both the Transport authority and the Commission foresaw serious anti-competitive consequences of a full merger is clear from the conditions of temporary existence of the holding company and the requirement that the subsidiary airlines behave as competitors.

Empirical studies carried out by the Commission found a significant relationship between market concentration on routes and price levels. The Commission has taken action on routes where excessive prices have been observed.

(4.2) *In considering airline mergers and alliances what consideration was taken of potential explicit or implicit co-ordinated behaviour amongst the surviving airlines ex post? Are there factors in the airline industry, which might particularly favour such co-ordination? What are these factors?*

The potential (explicit or implicit) risks to competition in airline mergers are central to the decision of the Commission. Actually, no full merger operation has been submitted to the Commission, as explained in 4.1 The major factor in the airline sector, which favours co-ordination, is protection from foreign competition. Given the prevailing high levels of concentration on the more densely travelled domestic routes, a measure of tacit collusion appears to be inevitable on those routes.

5. *Efficiency benefits from alliances and mergers*

(5.1) *The efficiency benefits from airline mergers and alliances might include more efficient connecting services, enhanced value of the frequent-flyer program, more efficient use of terminal facilities and ground-handling facilities and elimination of double-marginalisation. What efficiency benefits have been claimed in practice? Have these benefits been quantified?*

The two major Mexican airlines claim a number of scale benefits and synergies that a merger of the two would bring about. As previously mentioned, there is abundant and conclusive research that there are no economies of scale in the airline industry. There are economies of density derived from support services such as reservation systems. There is also the preference of the public for large airlines that offer more destinations. In the Mexican context these benefits can be achieved without mergers, *i.e.* through competitive alliances that extend routes and share costs. In fact, even a merger of the two larger Mexican airlines would create an airline insufficiently large to fully reap such economies. The most important source of synergies from an airline merger of the two major companies would be the reduction of personnel.

(5.2) *International alliances allow airlines to take advantage of certain efficiency benefits in circumstances where national laws prevent or discourage full merger. What efficiency benefits of international alliances have been claimed?*

International alliances offer efficiency benefits compatible with market competition. National airlines can save costs in the leasing or purchasing of equipment, better financial treatment, and the like. International alliances extend the number of destinations without inducing collusion and are a powerful incentive to maintain quality of service.

6. *Competition issues at hub or dominated airports*

(6.1) *Competition concerns in airlines have particularly arisen in relationship to "hub " airports in which a significant proportion of the passenger movements is accounted for by a single airline. To what extent have such concerns arisen in your country? Is airline dominance of an airport of concern if the airline faces adequate competition on each individual route it flies? Would the dominance of an*

airline at an airport be of concern in the absence of loyalty programs such as frequent-flyer programs or travel agent commission override programs?

Research shows that airline airport dominance is a major factor affecting competition in air transport. Route competition depends on the availability and quality of airport slots at specific hours. Although there are no real hubs in Mexico, the dominance of the two major airlines in Mexico City's airport is of concern to the Commission.

(6.2) *What factors might erode the dominance of an airline at a single airport? Can a single airport act as a hub for more than one airline? In those airports where there are two or more dominant airlines, is the competition between airlines more or less intense?*

The most powerful way to erode the dominance of an airline at a single airport is to increase capacity, either by expanding the facilities, or by developing new airports serving the same area.

7. Competition issues in related services

The provision of air transport services requires the input of a number of complementary (*i.e.*, vertically-related) services, including terminal services, ground-handling services, computer-reservation services, travel agent services and so on. In principle, a firm, which is dominant in the provision of these services and vertically integrated into the provision of air transport services, has both the incentive and the ability to restrict competition in air transport services.

(7.1) *Have cases arisen in which an airline (or group of airlines) has acquired a dominant position in the provision of these related services? In these cases, has it been necessary to impose special restrictions on the behaviour of these integrated firms to ensure that competitors have non-discriminatory access to the related services? Have these restrictions been successful? (In other words, is it possible to effectively control the access to competitors to the dominant services provided by an integrated rival?) Have there been cases where an airline has been forced to divest itself of these related services?*

Given the existence of a temporary holding company, of which the two major national airlines are subsidiaries, the Commission has maintained a close watch of the operation of related services, such as reservation systems and ground services. It is noteworthy that ASA, the public agency in charge of airport services, is associated with the major Mexican airlines in the provision of ground services. The Commission has requested ASA to divest itself from this undertaking. This is the only case of such nature dealt with by the Commission.

(7.2) *In some countries there sometimes appears to be a link (perhaps informal) between the national flag carrier and a major national airport. What mechanisms are in place to ensure that airport facilities (such as slots and gates) are allocated in a competitively neutral manner to carriers? Where the airport has tended to favour the national flag carrier, how might this change the incentives for foreign airlines to enter an alliance?*

It is uncertain which of the two major airlines in Mexico qualifies as a flag carrier. There is the intention of the two to merge and become a flag carrier. They have had, however, a dominant position in major airports that have created grandfathering rights against new entrants or smaller airlines. Foreign airline interest in forming alliances with the two main national carriers is derived from this fact.

- (7.3) *Specifically in the case of airline mergers and alliances, have cases arisen in which an airline alliance or merger threatened to restrict competition or create a dominant position in these related services?*

This is the case of the ASA association with the major Mexican airlines explained in 7.1.

8. Remedies

- (8.1) *In challenging or approving mergers or alliances what remedies or conditions have been imposed? Has divestiture been required? Of what services? Have these remedies proved successful?*

The approval of the temporary merger of the main airlines explained above was subject to a number of conditions and restrictions that might be termed remedies. The conditions have not been successful given the strong incentives of the airlines to enter into agreements and the difficulties associated with enforcing the conditions. Facilitating entry has not so far been effective, and the major airlines' smaller competitors are in serious financial difficulties. Remedies have not proven to be effective.

9. Other issues

- (9.1) *Has your consideration of airline mergers and alliances involved international co-operation between competition authorities? Has this co-operation been successful? Please explain*

The experience of other competition authorities has been valuable to Mexico's Commission. The Commission gives consideration to the fact that international alliances might be blocked by other authorities if competition in Mexico is not enforced.

- (9.2) *In some countries the final decision of the competition authority is subject to approval by a higher authority which is authorised to take into consideration wider "public interest" concerns. Has the opinion of the competition authority been rejected or overturned in airline cases? Has political pressure been brought to bear to influence the outcome of competition issues in airlines?*

There is no higher authority to which the Commission has to submit its decisions. The restrictions to the Commission's decisions that might qualify, as "public interest" concerns are those contained in the Mexican Constitution regarding activities restricted to the government, such as petroleum and basic petrochemicals, among others.

NORWAY

1. Regulation of licensing and entry

(1.1)

The only restriction on new entry on domestic routes, which are not subject to public service obligations, is that the airline must have a license issued in one of the countries, which are parties to the EEA agreement. The carrier must meet equal requirements as settled in the Council Regulation (EEC) No 2407/92 of 23 July 1992. There are no limits on the number of domestic competitors.

Some domestic routes that are not profitable for airlines to operate are subject to public service obligations. The access to these routes is decided by competitive tenders every third year for a period of three years. The Ministry of Transport and Communications stipulates the prices and the quantity offered on these routes. The airline, which offers to fly the routes for the lowest subsidy on terms settled by the Ministry, is given sole access to the route or routes.

(1.2)

There are different kinds of regulatory restrictions on international services. The regulatory means vary, depending on the geographical area.

There is free entry on routes between Norway and other EEA countries for airlines with a license issued in one of the EEA countries. There are no restrictions regarding the airlines' capacity or prices. International airlines, with a licence issued in any EEA country, are free to provide domestic services. The markets in this geographical area are in other words almost fully deregulated.

Only Norwegian and American airlines can provide services on routes between Norway and the USA. These airlines face no restrictions regarding capacity and prices provided on these routes. American airlines can't provide domestic services in Norway, nor can Norwegian airlines provide domestic services in the USA.

The regulatory restrictions on routes between Norway and other countries than the USA and EEA countries are settled in bilateral agreements between Norway and the country in question. The regulatory restrictions may thus vary between the different markets.

2. Regulation of prices and ownership; Application of Competition Law

(1.3)

There are no limits on prices or terms of conditions that airlines can offer in the deregulated markets like the Norwegian domestic markets and on routes between Norway and other EEA countries. Neither is there any limits regarding prices or terms of conditions on routes between Norway and the USA.

The Ministry of Transport and Communications stipulates prices and terms of conditions on domestic routes subject to public service obligations. Any limits on prices and terms of conditions on routes between Norway and other countries than EEA countries and the USA, are settled in bilateral agreements between Norway and the country in question.

Planes of category II are for environmental reasons only allowed to land or take off during the day. Furthermore the Norwegian Civil Aviation Administration controls the ownership of airlines in line with the provisions of the Council Regulation (EEC) No 2407/92 when it issues a license.

(1.4)

The airline industry has been granted a group exemption by the European Commission, which will expire 30 June 2001. The group exemption is part of the EEA agreement and thus implemented in Norwegian law. It allows airlines to collaborate on prices for interlining purposes in the EEA area. The competition authorities are responsible for enforcing competition law in this sector.

3. Competition analysis

3.1 Market Definition

(2.1)

We have identified “city-pair” as the relevant geographical markets since the consumers demand airline services from one city to an other.

(2.2)

We usually distinguish between business passengers and leisure passengers because of the differences in their demand. The first group of passengers has high time costs and don't pay for the tickets themselves. They are thus more sensitive to travelling time than prices when they choose among airlines. Leisure passengers are more price sensitive when they make their choices. We have not in our competition analysis focused on a particular class of customers. Whether a non-stop connection is a separate market from a connecting service, depends on how substitutable the passengers find the non-stop and the connecting service.

(2.3)

The airlines consider frequent-flyer programs, travel-agent incentive programs and company discounts programs as important terms of competition. The frequent-flyer program is considered by the flag carrier to be the most important tool in creating customer loyalty. Since it creates switching costs it is likely to reduce actual competition and it might also increase barriers to entry.

(2.4)

Inter-modal competition has very little influence on airline pricing in the business segment, but it may have some influence on airline pricing in the leisure segment. The inter-modal competition decreases as the distance travelled increases. The level of the intra-modal competition does not vary in a systematic way with the distance travelled.

3.2 *Barriers to entry, expansion and exit*

(3.1)

There are no barriers or restrictions that prevent an expansion of services by an existing carrier on any domestic route not subject to public service obligations. There are international routes between Norway and other countries where the regulatory regime on a specific route is settled in bilateral agreement between Norway and the country in question. These agreements may have provisions about how the services should be expanded by the existing carriers.

(3.2)

There is no domestic route where new entry is restricted due to restricted access to slots, terminal facilities etc. New entry may (at least to some extent) be restricted on some international routes where the regulatory regime is settled in bilateral agreement between Norway and the country in question.

(3.3)

The most important sources of sunk costs of an entry are probably costs connected with establishing an organisation, like administrative costs and marketing, at the airport to handle passengers, luggage etc. Except at the main airport in Norway, it has proved to be increasingly more difficult to buy or lease these services from other providers. This is probably due to the fact that providers at the other airports usually are competing airlines.

(3.4)

When the new main airport, Oslo Lufthavn Gardermoen, opened in 1998, it became possible for the first time since the deregulation of the domestic markets in 1994, to enter into or to expand existing services in the most important domestic markets. This led to entry of a new low-price airline and to an extended supply of existing airlines' services. The airlines' increased supply led to an increased number of discount seats and probably to more favourable contracts for at least a part of the larger business

customers. This did not prevent a low-cost airline (Colour Air) to enter into three of the city-pairs. However, the airline has just gone bankrupt, about a year after it was established.

(3.5)

There is (probably) an asymmetry in the willingness to exit a market between a hub-and-spoke operator and a regional feeder or "point-to-point" airline. The latter is more dependent on making a profit on each route than the first one. A hub-and-spoke operator will not exit from an unprofitable market if the income these passengers generate in the remaining network exceeds the losses of the route(s) in question. Even if the generated income does not exceed the losses, the hub-and-spoke operator may still choose to operate unprofitable routes if that is necessary to attract company customers.

3.3 *Competitive effects of mergers and alliances*

(4.1)

The Norwegian Competition Authority (NCA) did not quantify, but identified a number of anti-competitive effects regarding a merger between a regional airline and the flag carrier in 1998 (this merger is discussed further in 5.1 below).

(4.2)

There was a co-ordinated behaviour among all the airlines already before the merger was executed. This co-ordinated behaviour, which still goes on, is due to the price collaboration allowed by the European Commission' group exemption for agreements on interlining prices (like fully flexible fares) and is not a result of the merger. There is no other form of co-ordinated behaviour among airlines in Norway. In general, the airlines' co-operation at IATA congresses is probably the most important factor to create an environment for collusive behaviour in this industry.

3.4 *Efficiency benefits from alliances and mergers*

(5.1)

In 1998 Widerøes (a regional airline) was acquired by SAS (one of the two dominant airlines on main routes and the flag carrier). The parties to the merger claimed a large number of efficiencies would be achieved as a result of the merger. They claimed that the merger would improve the efficiency of the connecting services, lead to more efficient ground handling services and more efficient use of other terminal facilities. The co-ordinated purchase of insurance, fuel, planes and others would also give considerable cost-reductions because of increased discounts. The NCA did not accept discounts as efficiencies. Furthermore, the merger would give improved benefits from more efficient use of IT and CRSs in general. The parties had not quantified these benefits in any internal paper forwarded to the boards of the airlines before the merger was decided. They tried to quantify the efficiency gains of co-ordinated purchase, improved connecting services and ground handling services at our request.

(5.2)

The claimed efficiency benefits of international alliances are very much in line with what local airlines have claimed between the SAS/Widerøes merger. The claimed efficiency benefits are that each airline will be able to reduce connection time to destinations within the network of their partners. The alliances will enable the parties to enter new routes or extend their services at existing routes, an entry which each of the airlines is not able to do on their own. Furthermore, the alliance will lead to efficiency benefits through co-ordination of resources like better exploitation of planes and other facilities, joint purchases and marketing. The benefits to the passengers will among other things be so-called seamless travelling with one check-in on a journey with several stops, access to more lounges, more advantageous frequent-flyer programs etc.

3.5 *Competition issues at hub or dominated airports*

(6.1)

The Norwegian domestic markets and the major airport in Norway (Gardermoen) are dominated by two airlines. If an airline dominates an airport, it is usually also the dominant or sole supplier in the different ground-handling markets. This can be used by the airline to achieve better services at the expense of their competitors in the air transport markets. A dominating airline would also get a larger share of the connecting passengers, not only because it can co-ordinate the routes and thus reduce the connecting time, but also because of its loyalty programs. This implies that “adequate” competition on each individual route may not be enough to prevent an abusive behaviour in the markets. The dominance of an airline would be of less concern in the absence of loyalty programs because these programs might increase the barriers to entry in every air transport market.

(6.2)

In order to erode the dominance of an airline at a single airport the effects of the dominant airline’s loyalty programs should be reduced or abolished. To let other suppliers of ground-handling services provide their services at the airport might also have pro-competitive effects.

3.6 *Competition issues in related services*

(7.1)

There are no known cases, which have arisen because an airline has acquired a dominant position in the provision of airline industry related services.

(7.2)

Slots are distributed at the Oslo Airport Gardermoen by the slot co-ordinator Airport co-ordination Norway AS. The three largest airlines in Norway own 50 percent of the shares of this firm. The owner of the major airport, Oslo Airport Gardermoen AS, owns 20 percent of the shares and the Norwegian Civil Aviation Administration owns the remaining 30 percent. The slots are distributed by the slot co-ordinator in accordance with the provisions equal to the ones contained in the Council Regulation

(EEC) No 95/93 of 18 January 1993. Complaints regarding the slot co-ordinator's decisions can be forwarded to the Ministry of Transport and Communications.

The allocation of other airport facilities is executed by the board/administration of the major airport.

(7.3)

There have been no cases in which an airline alliance or merger has threatened to restrict competition or create a dominant position in these related services.

3.7 Remedies

(8.1)

The NCA imposed several conditions regarding market behaviour when approving the merger between SAS and Widerøes Flyveselskap AS. The conditions prevented the parties from exploiting Widerøes' monopoly position on routes subject to public service obligations in order to give SAS advantages when competing in the deregulated markets. These means have proved to be successful.

3.8 Other issues

(9.1)

There is a regular co-operation between the Norwegian competition authorities and the European Commission's competition authority (DG IV) within the framework of the EEA agreement.

(9.2)

Complaints of the NCA's decisions can be forwarded to the Ministry of Labour and Government Administration. The decision of the NCA has never been rejected or overturned in airline cases, nor has political pressure influenced the outcome of competition issues regarding the airline industry.

POLAND

1. Introduction

The basic act regulating air transport in Poland is the Air Law of 31 May 1962 with later amendments. Fundamental political and economic changes since 1989 in Poland and in the international environment, particularly in the Central/Eastern European region, necessitated adapting the present Air Law to new requirements. As a consequence the draft new Air Law has been elaborated, taking into account changes in the Polish legal frameworks introduced since 1962, for example the new Constitution of the Republic of Poland of April 1997. The draft Air Law is now under consideration by the Council of Ministers and in October 1999 should be submitted to the Parliament.

The provisions proposed in the draft Law is based on two systems:

- the regulations of the Chicago Convention, standards and recommendations issued by the International Civil Aviation Organisation;
- aviation regulations of the EU as well as Joint Aviation Authorities and EUROCONTROL.

It should be underlined that the provisions of the mentioned new draft Air Law are compatible with the *acquis communautaire*.

The responses to the questions are based on the relevant Polish regulations:

(1.1)

The domestic air services can be provided by any entity majority owned and effectively controlled by Polish nationals. This entity has to obtain a licence issued by the Minister of Transport and Maritime Economy based on the Economic Activity Act.

The licensing requirements are as follows: - a licence - can be issued to an entity, which has appropriate formal, technical, financial and economic qualifications (as far as safety is concerned). After obtaining the licence issued by the Minister of Transport and Maritime Economy, to start air transport activity, an air carrier has to obtain the Air Operator Certificate issued by the General Inspector of Civil Aviation.

The number of domestic competitors is not limited. Nevertheless the condition for obtaining the license and certificate of the air transport operator must be met. The Polish civil aviation authorities encourage new domestic entry into air transport services in the domestic market, however economic conditions, mostly lack of capital, limits the number of Polish entrepreneurs entering this field.

(1.2)

International air services are based on intergovernmental bilateral aviation agreements signed by Poland with 85 countries. According to these arrangements, international air services can be performed only by the air carriers designated by the State civil aviation authorities - parties to the agreement. Multiple designation rules are generally accepted. The restrictions of expansion and new entry on the air services market arise from bilateral agreements in which the air routes with air freedoms and points of landing are agreed, the air carriers are designated and the capacity share is established. Cabotage rights are restricted to Polish air carriers licensed and registered in Poland, and substantially owned and effectively controlled by Polish entities.

(1.3)

The civil aviation authorities (Minister of Transport and Maritime Economy and the General Inspector of Civil Aviation) no longer regulate air service prices (only the antimonopoly regulations are applicable). The civil aviation authority influence on international tariffs settled by the bilateral agreements is reduced to a minimum. The interference of state authorities is provided only in cases of excessive or dumping tariffs. Poland has proposed tariff liberalisation on European air routes but the other states opposed this proposal. A fully liberalised legal regime concerning air tariffs shall replace existing provisions of bilateral agreements between Poland and EU Members only after the accession of Poland to the EU. There are no restrictions concerning types of planes or offered services that might have competition implications. In the field of environmental protection, the international regulations are applicable, for example Annex 16 Part II Chapter 2 to the Chicago Convention or EU Council Directive No. 14/92 on the limitations of the operation of aeroplanes covered by Part II, Chapter 2, Volume 1 of Annex 16 to the Chicago Convention.

In the field of ownership control, the provisions of bilateral agreements and Air Law of 1962 are applicable. According to Art.65a of this act, acquisition or control of shares by foreign entities in a company providing air transport services and other air services as well as the management of airports on the territory of Poland requires authorisation by the Minister of Transport and Maritime Economy.

(1.4)

The Act of 24 February 1990 on counteracting monopolistic practices and protection of consumers' interests does not include provisions concerning block or individual exemptions and applies equally to all sectors of the economy. The Office for Competition and Consumer Protection (the OCCP) has not conducted market researches in the airline industry sector so far. Cases involving airline merger notifications have not been considered, and there have been no cases concerning monopolistic practices or abuse of dominant position in the airline sector.

It is worth mentioning, however, that the OCCP has commented on the draft new Air Law, concerning, *inter alia*, the division of powers between the future Civil Aviation Authority (CAA) and the OCCP. In the majority of cases the comments presented by the OCCP were accepted by the Ministry of Transport and Maritime Economy, responsible for the elaboration of the draft law. Particular attention was given to the necessity of co-ordinating the legislative activities conducted by the Minister of Transport and Maritime Economy and the President of the OCCP. The OCCP is currently engaged in drafting a new Law on competition and consumer protection, which is to replace the existing Law on counteracting monopolistic practices and protection of consumers' interests. The new law under elaboration provides for the full harmonisation of the antimonopoly provisions with the provisions in force in the European Union

(especially Art. 81 and 82 of the Amsterdam Treaty, former Art. 85 and 86 of the Rome Treaty) and *inter alia* for introducing so called block exemptions, which would apply to the market conduct of entrepreneurs defined by the Council of Ministers regulation. Such exemptions are proposed in the draft new Air Law with regard to air carriers.

Considering the above, the change of the wording of Art. 176 of the Air Law was proposed by introducing the block exemptions prerequisites, as foreseen in the draft Law on competition and consumer protection, in which in turn the respective reference to the new Air Law will be included. The competence to issue regulations defining lawful agreements, decisions and other practices of air carriers will be entrusted to the Council of Ministers, which in this regard will act upon a motion of the President of the OCCP and the President of the CAA.

Adopting the proposed wording of Art. 176 of the draft Air Law would make it possible to adjust the provisions in this respect to the Communities law (Art. 81(3), former Art. 85(3) of the Treaty of Rome and the Council Regulation of 14 December 1987 on the application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector). Moreover, provisions producing an overlap in the competencies of the CAA and the OCCP were deleted, as the result of the OCCP initiative, in favour of the sector regulatory body. In relation to EU Members, the Competition Rules stated in the Europe Agreement of 1991 are applicable. Relations with third countries are governed by bilateral agreements.

(2.1)

The answer depends on which types of information are needed and for what purpose. The markets can be considered as “country, city, airport markets”.

(2.2)

The European short-distance air routes can be classified as “business market”, the Atlantic routes as “Polish ethnic market”, the far-East routes (Bangkok) and charter flights as “tourist market”. Simultaneously, these types of air routes are not considered as separate markets. The “non-stop flights” are not distinguished from other types of flights.

(2.3)

As with many other airlines, the Polish national carrier LOT has a frequent flyer program. Generally, this program increases demand for LOT services.

(2.4)

Inter- modal competition does not influence prices of air transport in Poland. Currently, in Poland there is no transport mode competing with air transport. This could change if a fast “Inter-city” railway network is developed in the future.

(3.1)

There are no barriers or restrictions that prevent an expansion of services by existing carriers. The Warsaw airport is not congested, so there are no constraints on the availability of take - off and landing slots. In the process of slot allocation all airlines have equal rights to obtain slots within airport capacity on a “first come, first served” basis. The rule of grandfather rights is also observed.

(3.2)

There are no barriers or restrictions (such as posed in the question) that prevent expansion of services by new entrants. The only restrictions result from provisions of international bilateral agreements (e.g. designated air carriers and points of landing etc.)

(3.3)

According to Polish regulations, leasing of aircraft, free access to the terminal services and computer reservation systems are possible.

(3.4)

The application of predatory prices by the new entrant carriers can result in the elimination from the market of another air carrier offering “point to point” service. In the framework of “hub and spoke system” prices are lower.

No Polish carrier has ever belonged to an alliance or been involved in a merger. In addition, no cases of excessive tariffs have yet been considered.

According to the provisions of the Act on counteracting monopolistic practices and protection of consumers' interests of 24 February 1990, the OCCP can require the division of an enterprise not fulfilling the merger notification obligation. The OCCP can also require the reduction of prices if those prices are recognised as excessive or dumping.

(3.5)

There is a conflict between the “point to point” and “hub and spoke” operators. The “point to point” operators (like LOT) are losing traffic to “hub and spoke” operators, although the level of services performed by the “hub and spoke” operators is often not better (taking into account the need to transfer in hub airports and the existence of direct flights performed, for example, by LOT on the Warsaw - New York route).

(4-5) *No experience of this in Poland.*

LOT is now being privatised. The first stage of this process should be accomplished at the end of 1999. The selection of a strategic investor has to be provided during this first stage as well as the enhancement of the company capital by 30-50 percent and the sale of 38 percent of shares by the State Treasury to the strategic investor (including ten percent for industry investor - an airline). Currently,

potential investors are examining the company and then offers will be settled and an investor chosen. One criterion for the industry investor selection is the possibility to enter one of the existing groups of alliances in future.

(6.1)

Although Warsaw - Okęcie Airport is not a typical hub airport, there is a concentration of European and long-distance traffic there. The domination of LOT, whose activity is mostly concentrated in Warsaw Airport, is declining because it has to compete on each route with foreign operators (especially with operators from EU countries). Polish Government policy favours liberalisation of interregional air transport services.

(6.2)

No experience.

(7.1)

In Poland ground-handling services are performed by one operator and this is justified by the intensity of the traffic.

The Polish authorities claim that temporarily it is necessary to retain regulation of handling services for low-traffic airports and preference for the local undertakings in order to facilitate development of local airport and handling organisations.

In Warsaw - Okęcie Airport (the traffic exceeds 3 mln passengers) LGS (LOT Ground Services), the company vertically integrated with LOT, is operating. The introduction of a second (competitive) local ground handling organisation and a further liberalisation of handling services depends primarily on the opening of appropriate facilities in a new international passenger terminal and the resolution of the relevant capacity and other (traffic, security, etc.) organisational problems. The intended date of achieving that objective is 2000/2001.

Land-side passenger self-handling is generally allowed under bilateral reciprocal arrangements

(7.2)

There is close co-operation between LOT and Polish Airports State Enterprise, however this does not entail discrimination against other air carriers. Warsaw is not a congested airport therefore there is no problems with slot allocation.

The Minister of Transport and Maritime Economy issued Guidelines for slot co-ordination at Polish Airports based on the relevant IATA recommendations and the EU Council Regulation No. 95/93 on common rules for the allocation of slots at community airports. Applying these rules, the Minister appoints a slot co-ordinator for the Polish airports that complies with the provisions of the Guidelines including the rules of objectivity, impartiality and professional competence. According to the IATA recommendations, the slot co-ordinator is employed by the airlines. The capacity of each airport is established by the airport operator independently and submitted to the slot co-ordinator in the form of a

report. Slots are allocated on the basis of data included in such report. The airport operators do not take a direct part in the slot allocation process, it is the slot co-ordinator who prepares and forwards to each airport the Notice of Airport Capacity (NAC) for each season; simultaneously, NACs are forwarded to IATA.

No airline influences the establishment of airport capacity. In the process of slot allocation all airlines have equal rights to obtain slots within the airport capacity on a "first come, first served" basis. The rule of grandfather rights is also observed.

(7.3)

No experience.

(8.1)

No experience

(9.1)

Not yet. In case of further alliance with any airline such co-operation is possible.

(9.2)

The OCCP is the only competent body in these matters. Its decisions are subject to appeal. Notifications of alliances and merger cases have not yet been considered.

UNITED KINGDOM

1. Summary of the regulation regime for air services

1.1 *Regulation of licensing and entry*

Since 1993 any EU airline is able to operate services on any intra-EU route subject to only relatively minor licensing conditions relating to the safety and financial viability of the airline. This regime has been extended to non-EC members of the EEA provided that the airline is not majority owned or controlled by non-EEA nationals. There are no foreign ownership rules on EU registered airlines.

Routes between the UK and the rest of the world are generally subject to bilateral air rights agreements. These agreements have complex and often highly restrictive rules on fare levels (both maximum and minimum), frequencies, capacity, and the extent to which one-stop flights are able to compete with non-stop services. They also tend to specify which airlines can fly on which routes.

Bilateral agreements vary widely in the restrictions imposed on airlines. For example, the UK-US bilateral specifies the maximum level of frequency that each airline is allowed to provide on each route, whilst the UK-Canada bilateral has no frequency restrictions. Bilateral restrictions also differ in how liberally the rules are administered. In particular, whilst most bilateral agreements insist that fares are subject to regulatory approval (on both sides), they often contain rules which limit the scope for arbitrary intervention. The trend has been towards a progressive liberalisation of the restrictions contained in air rights agreements, with frequency levels being increased, new entry permitted, and “open-sky” agreements negotiated on routes to UK cities other than London.

An independent sectoral regulator (the Civil Aviation Authority) together with the Department of Transport, the Environment and the Regions (DETR), are responsible for the general regulation of the UK airline industry. Competition policy is however administered by the UK and EU competition authorities.

1.2 *Airport slots and facilities*

Congestion is severe at both of London’s main airports, Heathrow and Gatwick. Slots at these airports are allocated in accordance with rules laid down by IATA and the EC slot regulation. As in other EU countries, first priority is given to incumbents using slots at existing times (grandfather rights), and next to incumbents wishing to swap their current slot for one at a more favourable time. Priority is then given to new entrants to the airport who are then able to bid for up to 50 percent of the remaining slots.

An independent company, BAA, is responsible for allocating airport facilities such as check-in desks and piers. There are no congestion problems at Gatwick, but at Heathrow, there is almost no spare capacity at many hours of the day.

2. Competition analysis

2.1 Market definition

2.1.1 Summary

When examining airline mergers and alliances the UK defines the relevant economic market on a case by case basis.

In general, other transport modes are only capable of providing effective competition to air on UK domestic services and on routes between London to Paris and Brussels where there is a high-speed rail link. On other routes a city-pair definition has usually been adopted, and a distinction has been drawn between time sensitive (largely business) and non-time sensitive (largely leisure) passengers. On most short-haul routes and on the denser routes between the UK and US, the market for time sensitive passengers has been narrowly defined to include non-stop services only. However, on very long routes, e.g. London-Australia, and on routes where non-stop services are relatively infrequent, connecting services have been regarded as providing effective substitutes for all passengers.

One of the interesting aspects of airline mergers and alliances is that they potentially raise a number of different competition issues. Whilst a city-pair approach is usually the best means of appraising the loss of actual and potential competition between the parties, mergers/alliances are also capable of raising entry barriers more widely throughout the network e.g. by the joining together of FFPs. To appraise these issues, a wider market definition, for example, all routes between the EU and US, is often required. An airline alliance is also capable of increasing the dominance of each airline at their respective hubs. In this case the key question is whether the airport is itself a relevant economic market, or whether it competes in a wider market with rival hubs.

2.1.2 Non-stop v indirect flights

The choice between a non-stop and an indirect flight depends upon a number of factors. These include:

- the overall journey time;
- the frequency of the service;
- the departure and arrival times offered;
- the time spent making a connection;
- whether an intra-lining or “seamless” connecting service is available.

The substitutability of a non-stop and a connecting flight depends largely upon the opportunity cost of a passenger’s time. Passengers, who have a high opportunity cost of travelling, e.g. business travellers, are more willing to pay a premium for the shorter journey time a non-stop service offers. However, the opportunity cost of a business travellers’ time differs throughout the day. For example, on flights from the UK to the US, there is a high demand for flights that arrive in time for a morning meeting, and which involve making the journey during sleeping hours (when opportunity cost is low). Similarly

there is a high demand for flights which leave the UK in the late afternoon, which permit business travellers to do a full days work. A connecting flight that leaves or arrives at particularly convenient times may therefore be preferred to shorter non-stop flight.

The relative frequency of direct to indirect flights is also an important factor in determining their substitutability. Frequent flights provide passengers with a wider choice of departure and arrival times, which in turn allows them to minimise both the duration of their trip and the potential costs associated with flight cancellations and delays. Business passengers particularly value the benefits of a more frequent service, so that, for example, a three times per day connecting service, may well be preferred to say a daily non-stop alternative.

Non-stop flights do however have a number of advantages over indirect flights other than the shorter journey time. For example, a non-stop flight significantly reduces the risks of flight delays and associated inconveniences such as loss of luggage. There is also some empirical research to suggest that the opportunity cost of waiting in a terminal is substantially greater than time spent “in the air”¹. This suggests that the opportunity cost of using an indirect service is greater than the difference in journey time implies.

One of the notable features of the UK market is the high number of non-stop services that are offered from London. For example, 22 US cities are served by a non-stop service from London compared to 15 from Frankfurt, and ten from Amsterdam². Moreover, such “spoke” routes are to major cities, and represent some of the most heavily travelled routes in the world. Most of these routes have three or more frequencies per day, and, for these route at least it is difficult to obtain a more frequent service or a more convenient arrival or departure time by choosing a connecting flight.

Flying to the US via a continental European hub is unlikely to provide a substitute given that such a routing involves a significant amount of backtracking, and that these hubs offer a much more limited range of destinations and frequencies (*see* table 1 below). Indeed, there is almost no evidence of passengers connecting over EU hubs.

Table 1: Flight frequencies (weekly) between European and US Cities (1997)

US Destination	London	Frankfurt	Amsterdam
New York City	154	50	31
Washington	42	21	7
Boston	49	21	7
LA	42	15	9
San Francisco	35	7	7

Connecting over an US hub is likely to be more viable. However, on flights between London and eastern US cities, (where frequencies are relatively high, and where connections tend to add significantly to the overall journey time), there is little evidence that consumers view connecting flights as an effective substitute. For example, 98 percent of UK passengers choose to take a non-stop service from London to New York and 96 percent on London-Boston³. Even on longer flights, the number of passengers flying non-stop is still relatively high on the major routes. For example, 90 percent of UK passengers choose to fly non-stop on London-LA, and 86 percent on London-Dallas. The number of passengers choosing to take a non-stop service does however fall significantly when the number of frequencies falls below one flight per day. For example, on London-Tampa, where there are only three non-stop flights per week, only 21 percent of UK business passengers choose to fly non-stop.

The above evidence suggests that for time-sensitive passengers, indirect services are unlikely to provide an effective substitute for a non-stop service, unless indirect flights offer a more frequent service or more convenient arrival and departure times.

For non-time sensitive passengers, their lower opportunity cost of time means that they are less willing to pay for the added convenience of a non-stop service. In addition, it may be possible for some leisure travellers to switch to a different destination if the price of leisure tickets were to rise on a particular route. Indeed, the relatively low prices on routes from the UK to leisure destinations such as Miami and Orlando have seen many passengers take a long haul rather than a short-haul holiday. This suggests that the relevant product market for non-time sensitive passengers may well include both direct and indirect flights, and that the geographic market may possibly extend beyond individual city-pairs.

The above conclusions do however need to be treated with some caution. Although there is substantial evidence that time-sensitive passengers are willing to pay a premium for a high frequency non-stop service, the more appropriate question for market definition is whether a significant proportion of such passengers would be prepared to switch to an indirect service in response to a price rise.

At present it is difficult to test this issue empirically, particularly on long-haul routes, where bilateral agreements typically prevent indirect flights from undercutting the prices charged by non-stop services. It is also difficult to judge how a passenger's willingness to switch to an indirect service will change when long-haul air markets become liberalised. Under open-skies there is likely to be a greater opportunity for airlines to expand their frequencies and to develop their networks, and this increase in competition may result in more time-sensitive passengers flying indirect.

2.1.3 Business v leisure passengers

The existence of a separate non-stop market implies either that passengers are predominantly time-sensitive and have a high willingness to pay for the (generally) greater added convenience a non-stop service provides, or that airlines can find some mechanism to price discriminate between time-sensitive and non-time sensitive passengers.

In fact, airlines have found it only too easy to develop tariffs to distinguish between time-sensitive and non-time sensitive passengers. Interestingly charging higher fares for business class seats is an increasingly ineffective means of exploiting business passengers' greater willingness to pay. CAA statistics for example show that 25 percent of UK business passengers now travel in economy class. However, business passengers can be identified by their inability to book in advance, the times of day and week they travel their greater need for flexibility, and the shorter duration of business trips relative to holidays. Characteristically, the fewer restrictions placed on a ticket, the more expensive it is, and the more likely it is to be purchased by a business passenger.

2.1.4 Heathrow v Gatwick

Most airlines operating out of London have a preference for using Heathrow. In part this is because high paying business passengers themselves generally prefer to fly from Heathrow. Airlines operating from Heathrow can therefore usually expect to earn higher yields. A further reason is that most major European airlines have a substantially greater presence at Heathrow than at Gatwick. Increasing the number of frequencies or destinations served from Heathrow is thus likely to attract more passengers to the network (increasing yields). Airlines may also be able to obtain cost savings by concentrating their services at one airport.

In contrast, Gatwick has very much become a hub for BA, and very few airlines have any sort of presence there at all. BA, together with its subsidiaries and franchisees now controls approximately 49 percent of the available slots at Gatwick, the next largest airlines being Jersey European with four percent, and Virgin and Alitalia with two percent each.

Table 2: Airlines share of slots at Heathrow

Heathrow	Slots
BA	38 %
British Midland (BM)	13 %
Lufthansa	4 %
Aer Lingus	4 %
SAS	3 %
Air France	2 %
Iberia	2 %
American Airways (AA)	2 %
Air New Zealand	2 %
United Airlines	2 %
Virgin	2 %
Swiss Air	2 %
Others	24 %

Although airlines generally prefer to use Heathrow, the more relevant question for market definition is the preference of consumers, and, in particular, what proportion of consumers who would be prepared to switch to Gatwick in response to a price rise on equivalent flights at Heathrow.

This question was recently examined by the UK Competition Commission (CC), (formerly the Monopolies and Mergers Commission), in their investigation into the BA/City Flyer Express merger. Their analysis found that whilst business passengers generally had a preference for Heathrow, a significant proportion preferred to use Gatwick. Survey evidence presented by the CAA also suggested that 35 percent-45 percent of passengers were indifferent between Heathrow and Gatwick. The CC concluded that the number of business passengers who were indifferent between the two airports was sufficiently large for them to be considered to lie in the same economic market. It perhaps should be noted that the CC inquiry examined the substitutability of Heathrow and Gatwick on a limited number of short-haul routes. There may therefore be city-pair routes where flights from Heathrow are not constrained by those from Gatwick.

Table 3: Proportion of point-to-point and connecting passengers at London Airports

Airport (total scheduled passenger, millions)		Point-to-Point		Connecting	
		Business	Leisure	Business	Leisure
Heathrow	(60.6)	28 %	38 %	11 %	22 %
Gatwick	(18.2)	19 %	50 %	9 %	23 %
Stansted	(5.3)	34 %	61 %	1 %	4 %
Luton	(2.7)	26 %	71 %	1 %	3 %
City	(1.4)	61 %	38 %	0 %	0 %

Source: CAA survey 1996.

One of the problems in assessing market definition here is that it is difficult to make a distinction between the choice of an airport and the services that are provided at that airport. For example, all things being equal, a passenger might be indifferent between a Heathrow-Houston and a Gatwick-Houston service. On this city-pair however the choice between the two airports is complicated by the fact that only BA operates from Heathrow (one flight per day), whilst only Continental flies from Gatwick (two flights per day). If a passenger chooses to fly from Gatwick, it is not clear whether they are doing so because it is their preferred choice of airport, or because they can obtain a higher level of frequency there, or simply because they prefer Continental to BA.

A further difficulty is that the proportion of passengers who are indifferent between Heathrow and Gatwick may vary from route to route. For example, there is some evidence that UK citizens are more indifferent between Heathrow and Gatwick than passengers from the US.

Market definition is complicated by the severe capacity constraints which exist at both Heathrow and Gatwick as well as by bilateral restrictions which often restrict the number of airlines that can fly from Heathrow.

In the face of such complexities, and from the perspective of the practical application of competition law, it is usually more appropriate to define the relevant market to include all city airports. One important advantage of this is that it ensures that budget airlines, which rarely operate out of major airports, can be included in the competition analysis. If operating at one airport does confer an important advantage, then this can be accounted for at a later stage of the competition analysis. In particular, if routes from minor airports provide only a weak competitive constraint, e.g. because operating costs are higher or yields lower, then it may be necessary to provide new entrants with access to the major airport.

2.2 *Barriers to entry, expansion and exit*

There has been a considerable amount of entry in recent years, the UK now having 27 independent airlines, the highest in Europe. Most new entrants have been budget airlines targeting routes where there is a high proportion of point-to-point passengers, such as Rome, Amsterdam, Dublin, Madrid and Barcelona. In addition the UK's major scheduled airlines, BA, Virgin, and BM have all expanded their networks. The former two airlines have also entered the budget market under the GO and Virgin Express brands.

As yet there has been no entry by non-UK airlines on internal UK routes. However, airlines such as KLM have greatly expanded their services from major UK cities to their hub at Amsterdam.

There are however a number of important barriers to entry and expansion which limit the potential for entry on many routes. These include:

2.2.1 *Absolute cost advantages*

- bilateral restrictions prohibiting entry and expansion;
- access to slots.

2.2.2 *Strategic entry barriers*

- economies of density and scope (supply-side and demand-side);
- frequent-flyer programmes;
- ability of incumbents to target new entrants (e.g. through selective price cuts).

Perhaps the most interesting aspect of entry barriers in the airline industry is that their impact varies not only from route to route, but also from airline to airline. In this context the paper focuses on two entry barriers in particular: access to slots, demand-side economies of density/scope.

2.2.3 *Access to slots*

Both Heathrow and Gatwick are highly congested airports and effectively full. Rapid growth at Stansted, London's third largest airport, has also led to it becoming a fully slot co-ordinated airport.

Although slots can be swapped, they cannot be traded for money. This combined with a slot allocation mechanism which confers grandfather rights, adds to the natural scarcity of slots, making it difficult for airlines who wish to expand their operations as well as for new entrants.

The slot allocation mechanism also provides incumbent airlines, and particularly the hub operator, with important first-mover advantages. One of these is the ability to control a higher proportion of slots at peak times. For example, BA's slot holding at Gatwick, together with their subsidiaries and franchisees, averages 48 percent. However, their share of slots at the early morning (0600-0800) and early evening peak (1700-1900) averages 62 percent and 61 percent respectively.

This advantage arises in part because the hub operator has usually been in the market longer, and has thus had more opportunity to progressively swap slots for those at better times. Having a large portfolio of slots also makes it easier for the hub operator to trade with other airlines as they are more likely to have slots at times their rivals want. A hub operator's more extensive timetable may also make it easier for them to make use of slots which other airlines do not want. These can then be exchanged for better quality slots at a later date.

Access to slots at peak times is particularly important for smaller airlines seeking to compete with a hub operator. For example, if a small airline is able to offer flights at peak business times, it may be possible to overcome the disadvantage of the hub operator's more frequent service. A conveniently timed slot may also allow enable a small airline to offer connecting passengers shorter waiting times than that of the hub operator. This can help them overcome consumer's natural preference for intra-lining.

It is however easy to overstate the importance of access to slots. Firstly although both Heathrow and Gatwick are severely congested, some slots do become available each year through the airport increasing their capacity and efficiency, and through airlines giving slots back to the pool. The number of new slots available to be allocated at Heathrow was three percent in 1998 and 1999, whilst the figure for Gatwick was seven percent and six percent respectively.

Secondly, access to a congested airport such as Heathrow is only an essential facility for certain airlines. In particular, budget airlines, a major source of competitive pressure, need to fly from non-congested airports in order to achieve their cost savings. Moreover, if a route is characterised by a high

proportion of point-to-point business or leisure passengers, then other airports, and in particular Gatwick, may provide an effective substitute. It is notable that on 67 Heathrow city-pair routes where there are >50,000 passengers, there is a competing services from Gatwick.

Finally, although access to slots provides an important barrier to entry and expansion, on many routes non-hub airlines have sufficient numbers of slots to be able to provide a high degree of effective competition to BA.

Nevertheless the lack of slots acts as a major barrier to entry on many routes, and, perhaps more importantly, makes it difficult for an efficient airline to grow rapidly at an airport or for the position of the market leader to be challenged.

2.2.4 *Demand-side economies of density and scope*

One of the most important features of airline markets is that customers are generally prepared to pay a premium for using the services offered by hub carriers.

The main reason for this is that connecting passengers typically prefer to use the same airline on all legs of their journey (*i.e.* they have a preference for intra-lining over inter-lining, or “seamless” travel). A hub and spoke operator is able to offer a vastly greater number of intra-line connections than point-to-point operators for a given number of aircraft. Notably, each time a hub operator adds a further spoke to their network, it allows an additional intra-line connection to each destination on their network. All things being equal, this greater ability to attract connecting passengers puts the hub operator at a revenue advantage to rival point-to-point carriers. This advantage is likely to increase the more destinations that are added to the network (economies of scope).

This additional demand from intra-lining passengers also makes it more viable for a hub operator to increase the frequency of their flights. Increasing frequencies on a route effectively increases the quality of the service, which in turn increases the demand from customers. For example, it allows passengers a great variety of departure and arrival times, shorter connection times, and greater flexibility (all of which are of particular value to time-sensitive and business passengers). These various frequency effects (or economies of density) are again likely to give the hub operator a revenue advantage over point-to-point carriers.

These economies of scale and density can be greatly enhanced through airline mergers and alliances, particularly if there was previously little overlap between the individual airline’s networks. However, the further exploitation of such economies of scale and density further increases the cost and revenue disadvantage faced by non-hub operators.

The problem is likely to be most acute where a merger or alliance links to major hubs. In this situation, the newly merged airline will have access to a high proportion of connecting traffic at both ends of the route, giving them a major revenue advantage. In order to compete, a non-hub operator would have to charge lower prices than a hub operator in order to compensate passengers for the poorer quality of service offered (*i.e.* lower frequencies, inter-lining rather than “seamless” travel etc).

Hub operators often seek to further increase their revenue advantage through attempting to increase the costs to passengers of using a non-hub airline. Frequent flyer programmes is perhaps a classic example, whereby, a passenger in effect pays a disloyalty payment every time they use the service of the non-hub airline (in terms of lost air miles from the hub-carrier).

It is however possible for non-hub operators to adopt strategies that minimise the revenue disadvantage they face through not having a network. The most obvious way of doing this is for an airline to create a “virtual network”, by signing a series of code sharing and interlining agreements with a wide number of operators. BM, for example, has non-exclusive code-sharing agreements with most US airlines.

An alternative approach is for an airline to differentiate itself from the hub-carrier, and to target those routes where the advantages enjoyed by the hub carrier are less marked. Budget airlines, for example, have been able to make a major impact on routes from the UK through offering a low cost, point-to-point service. At the other end of the spectrum, Virgin Atlantic has sought to provide a high quality service aimed at routes where there are large numbers of point-to-point business travellers.

Economies of density and scope arise in markets precisely because consumers are willing to pay a premium for the services provided by hub operators. The existence of a sizeable hub premium is well documented in the US. There is however some evidence those hub premiums might be lower in UK and European markets:

- the number of non-stop destinations served from London, is amongst the highest in the world, and the routes some of the most dense. On many routes there are likely to be sufficient point-to-point passengers for a non-hub operator to attain the minimum efficient scale;
- heathrow is too congested to allow departures and arrivals to come in waves. Connection times are thus likely to be higher than at many US hubs, reducing the advantage of intra-lining over inter-lining;
- heathrow is a relatively unconcentrated airport, with BA’s market share less than 40 percent, and many other major European airlines, most notably BM, having a significant presence;
- Virgin Atlantic’s market share tends to be disproportionately higher than that of the hub operator BA on routes where they overlap, despite their frequency disadvantage;
- BA has recently reduced their number of destination which, was reportedly due to the low yields which are being obtained from connecting traffic.

However, even if economies of density and scope are less marked than they are in the US, their existence still confers a cost and revenue disadvantage on non-hub airlines. The potential for these economies to act as a barrier to entry and expansion is also increased by the shortage of slots at London airports. Whilst some airlines have adopted alternative strategies to overcome their inability to reap economies of density and scope, these strategies will not be successful on every route. For example, budget airlines are unable to obtain the same cost advantages on long-haul routes.

2.3 *Anti-competitive effects of airline mergers and alliances*

The main competition issues, which have been raised in recent mergers and alliances involving UK airlines, are:

- a loss of actual competition on overlapping city-pair routes;
- a loss of potential competition on routes where the airlines networks overlap;

- an increase in barriers to entry through the exploitation of additional economies of density and scope (including the joining together of FFPs);
- an increase in barriers to entry through the hub airline gaining control over additional slots.

2.3.1 *Loss of actual competition*

Perhaps the biggest concern with airline mergers and alliances is their potential to reduce the number of non-stop competitors on routes between the two parties' networks. Competition concerns tend to be greatest on routes between the two airlines major hubs, where the preference of interconnecting passengers for "seamless" travel limits the prospects for entry by non-hub operators.

Competition on affected hub-to-hub routes may still be possible if other airlines have a major presence at either end of the route. For example, the proposed BA/AA alliance would have linked AA's hub at Chicago with BA's hub at Heathrow. However Chicago is also a hub for United, whilst BM has a major presence at Heathrow. It may also be possible for non-hub airlines to compete on hub-to-hub routes if there is a high proportion of point-to-point traffic. Indeed, Virgin has recently launched a London-Chicago service, whilst in Europe, hub-to-hub routes such as London to Amsterdam and Rome have been targeted by budget airlines such as Easy Jet and Ryan Air.

On overlapping routes which are not major hubs, or where the parties to the alliance/merger would have a hub at one end only, the loss of actual competition is potentially less severe. In such a situation the competition analysis will depend upon the characteristics of the route. The key considerations are:

- the effectiveness of competition from indirect services;
- the number and market share of the remaining non-stop competitors;
- whether rival airlines have a significant presence at the airport;
- the proportion of point-to-point passengers on the route;
- the size of the route (number of passengers);
- other entry barriers including bilateral restrictions and access to slots.

2.3.2 *Potential competition*

Potential competition tends to be of lesser importance than actual competition in airline markets due to the existence of a number of significant entry barriers, in particular, economies of density and scope. Such economies tend to provide the hub carrier with a strong competitive advantage, and in consequence, airlines rarely enter on a route unless they have a hub, or at least a major presence, at one or both ends. An airline merger/alliance is thus only likely to result in a loss of potential competition where the networks overlap. For example, in the proposed BA/AA alliance, the only significant loss of potential competition was adjudged to be on routes between the UK and the US.

In analysing the loss of potential competition the first consideration is whether the party which is not currently operating on a route is a likely potential new entrant. For example, in the proposed BA/AA

alliance, AA operated a service from their hub at Raleigh/Durham to Heathrow, and was the only airline on the route. BA, with its large operations at Heathrow, was clearly the most likely potential new entrant. In contrast, on BA's service from London to Denver (a United hub), the high proportion of connecting traffic, and AA's limited presence at Denver meant that AA was unlikely to enter the route.

On routes where there is a high proportion of point-to-point traffic, the advantages to being a hub operator are considerably reduced. A merger or alliance is thus likely to result in some loss of potential competition. However, the reduction in potential competition may be relatively modest if there is strong actual competition on the route, or where there are a large number of other likely potential new entrants.

2.3.3 *Increase in entry barriers through greater exploitation of economies of density and scope*

This was described in detail in the discussion on barriers to entry. The only additional consideration is that the parties to a merger/alliance may further increase the revenue disadvantage faced by non-hub operators by joining together their frequent-flyer programmes.

Although in principle FFPs can be highly effective in promoting customer loyalty, in practice, many UK employers insist that their employees always travel on the cheapest available flight. Indeed, many employers ban their employees from enjoying the benefits of FFPs altogether. Operating a FFP is costly, and the success of budget operators, who offer lower fares as an alternative to FFP benefits, possibly suggests that UK consumers may not value FFPs particularly highly.

Non-hub operators can also seek to reduce any revenue disadvantage by operating their own FFP, or, more feasibly by joining the FFP of a larger group of airlines. Smaller airlines are also increasingly able to join the loyalty schemes of supermarkets and financial institutions.

2.3.4 *Greater access to slots ("shuffle power")*

A merger or alliance is also likely to give the parties control over a greater number of slots at their hub airports. In their investigation into BA/City Flyer Express merger, the UK's Competition Commission identified two separate adverse effects flowing from the greater control over slots which they collectively termed "shuffle power".

The first of these is that an airline with a large portfolio of slots has a greater ability to "shuffle" their services in order to target a competitor on a route. This flexibility arises in part because the hub operator has considerably greater capacity at their disposal. However, having a larger portfolio of slots also provides the hub operator with a greater opportunity to re-time their flights so that they depart just before and just after the flight of the new entrant. When a new entrant is "sandwiched" in this way, they are much less likely to receive their proportionate market share. This potential to rapidly increase capacity and to re-time services increases the credibility of the hub operator adopting an aggressive or predatory strategy in response to entry.

The second aspect of "shuffle power" is that as a hub operator's market share at the airport increases, the greater is the likelihood that they will be able to find complementary slots to those that become available through the pool. For example, if slots become available for Monday, Wednesday and Friday, the larger the hub operator, the more likely it is that they will be able to find similarly timed slots on the other four days of the week. A hub operator will therefore generally be able to make better use of poor quality slots than a new entrant. This scale effect, combined with grandfather rights, is likely to mean that fewer slots become available for new entrants, further increasing barriers to entry.

2.4 *Efficiency benefits arising from airline mergers and alliances*

The principal efficiency benefits claimed for airline alliances and mergers are:

- cost savings arising through reducing the duplication of fixed costs (e.g. rationalisation of marketing and company overheads);
- cost savings from the more efficient use of current capacity (e.g. a larger aircraft fleet makes it easier to match the aircraft size with the demand on the route);
- cost savings through the use of larger aircraft;
- increased number of city-pairs where an intra-line connection is available (more “seamless” travel);
- increased frequencies and shorter connection times;
- increased number of routes served by a non-stop service.

The cost-side benefits of mergers and alliances are difficult to quantify. Although some cost savings are likely, the size of such savings is likely to be relatively modest, particularly in airlines alliances where the airlines continue to operate as separate businesses.

The efficiency gains from mergers and alliances are much more likely to arise on the demand side where the combination of networks allows more intra-line destinations to be served, and a higher level of frequency to be operated. These benefits are likely to attract more passengers to the network, and this may allow for a further increase in frequencies and for more non-stop destinations to be added to the network.

In essence, the claim made for mergers and alliances is that they will provide a higher quality of product for consumers at the same level of cost. However, many of these benefits are the same factors, which reduce actual competition and raise barriers to entry. Thus whilst the benefits may provide customers with a higher level of quality, it may also raise prices. It is thus difficult for a competition authority to assess whether the overall welfare of consumers will be improved.

One of the interesting features of demand-side efficiency savings is that, unlike cost-efficiencies, the benefits are naturally passed on to consumers (albeit that they may have to pay a higher price for them).

There is however a question mark over whether mergers and alliances actually provide a higher quality of service to all consumers. Whilst there is little doubt that an alliance will improve the quality of services for connecting passengers, if there are large cost-savings through encouraging passengers to travel over a hub and spoke network, an alliance may choose to reduce the number of destinations which are served by non-stop flights. Moreover, whilst an alliance is likely to increase the frequencies provided by a single operator on a route, the total number of flights may be less than when the alliance partners operated individually.

One of the practical difficulties in testing the claimed demand-side benefits is that there are restrictions on the extent to which airlines are permitted to discuss expansion and rationalisation plans prior to a merger.

2.5 *Competition issues at hub or dominated airports*

A hub is simply an airport where one or more airlines operate a sizeable network. However, hubs vary considerably in their characteristics, and this can have important implications for the nature of competition.

2.5.1 *“US-style” hubs*

In the US many airlines have developed hubs which are primarily designed to attract connecting passengers. Many of these “US-style” hubs have been deliberately located at cities which are not major destinations in their own right, and where consequently there is little demand from rival airlines to operate. With a high market share at the airport, the hub operator is able to organise their flights in such a way as to maximise the level of connecting traffic. This style of hub works best when the airport is also not congested as the hub operator can then schedule arrivals and departures in waves, and thus minimising the connection time for passengers.

2.5.2 *Heathrow*

Heathrow provides an extreme contrast to the US-style hub described above. Whereas an US-style hub is essentially a place to change, Heathrow is an important destination in its own right and thus attracts a high proportion of point-to-point traffic. For example, 72 percent of scheduled air passengers who fly to the UK leave or arrive at London airports.

The importance of London as a destination also means that virtually every major airline demands access to Heathrow. This, together with the extreme congestion at the airport, puts strong limits on the hub operator’s growth, and means that there is no possibility of flights arriving and departing in waves.

	US-Style	Heathrow
Congestion?	No	Yes
Hub operator share	High	Low
Connecting passengers	High	Medium
Point-to-point passengers	Low	Medium
Hub-to-hub frequencies	High	-
Hub-spoke frequencies	Low	High
Competition on spokes	Low	Medium
Competition from other hubs	High	Medium

The nature of competition at the two styles of hubs is very different. At an US-style hub, the high market share of the hub operator ensures that they are likely to be the only non-stop operator on most hub-spoke routes. Only on the larger spokes, and on spokes that are a hub for a rival airline, is non-stop competition likely to exist.

In contrast, at hubs like Heathrow, the hub operator is likely to face non-stop competition on most routes. This is in part because the spokes served from an airport such as Heathrow tend to be major cities, which are also the hub of rival airlines. The large proportion of point-to-point traffic and the high density of many routes also make non-stop competition more feasible. The fact that Heathrow is also a hub for BM further increases the scope for non-stop competition on city-pair routes.

Table 4: Hub Size (Actual flights)

Europe	Airline	Flights	%
Heathrow	BA	7 214	37
Gatwick	BA	3 244	39
Frankfurt	Lufthansa	10 065	56
Paris (CDG)	Air-France	9 487	53
USA	Airline	Flights	%
Atlanta	Delta	25 345	75
Detroit	Northwest	15 857	80
Houston	Continental	15 143	84
Chicago	American	14 674	40
Chicago	United	16 784	46
St Louis	TWA	15 649	76

Source: CAA based on OAG, July 1998

2.5.3 *“Is airline dominance of an airport of concern if the airline faces competition on each route it flies?”*

If an airline faces competition from a non-stop carrier on each route then airline dominance is less likely to be a concern. However, as in any market, competition concerns can still arise if the hub operator has a high market share, or if they have a significant cost or revenue advantage over their competitors, or if there are high barriers to entry and expansion on the route.

The answer to the question also depends upon the nature of the hub and the characteristics of the route. On routes where the hub operator faces competition from a rival who has a hub at the other end, then neither airline is likely to be at a competitive advantage. There may however be duopoly concerns, particularly if there is insufficient point-to-point traffic to allow a non-hub airline to enter.

One hub-spoke routes, the hub operator may however have a cost and revenue advantage over their non-hub rival. This may make it difficult for the non-hub airline to provide effective competition, particularly where there is slot congestion at the hub airport. The competitive advantage of the hub operator could however be moderated if there is a high proportion of point-to-point traffic on the route, or if there are a number of airlines with a significant presence at the spoke airport (e.g. if the spoke is a major city).

2.5.4 *Can a single airport act as a hub for more than one airline?*

The question was recently explored by the CC in their investigation into the merger between BA, and City-Flyer Express (a BA franchisee) where the concern related primarily to BA acquiring control over an additional 12 percent of the available slots at Gatwick. Although the CC was sufficiently concerned about BA’s increase in hub strength to impose remedies, they did not regard the prospect of a second network operator emerging at Gatwick as particularly likely. There were two reasons for this. The first was an acknowledgement that airlines can achieve economies of density and scope through concentrating their services at an individual airport. City-Flyer Express had in effect operated as a short-haul feeder service for BA’s long-haul services, and, without the link up to BA, the CC believed that connecting passengers would have diverted to competing hubs. The second was that there was no obvious demand

from airlines to establish a competing network (Virgin, perhaps the likeliest new entrant, had a market share of only two percent).

Clearly however there are airports where it is possible for more than one airline to operate a network. At Heathrow, for example, BM has 13 percent of slots and a substantial European network. There is no doubt that such a market structure has arisen at least in part because of historical UK air transport policy. However, there is some evidence that economies of scope and density, which drive the desire to dominate a hub, are less prevalent in a market like London. In particular, the high volume of point-to-point traffic means that the advantages accruing to network operators are less marked.

The importance of London as a destination also increases the number of spokes that can be profitably served from a hub. In such a situation competing network operators can differentiate themselves from each other by flying to different destinations. This reduces the extent of non-stop competition and further increases the likelihood that a hub can sustain more than one network operator.

2.6 Remedies

In the investigation of the proposed alliance between BA and AA, a raft of remedies were proposed, the most important of which was that BA and AA should make slots available to competitors wishing to compete on UK-US routes. A proportion of the slots were to be hypothecated to the routes where the greatest competition concerns were perceived, namely, those between BA's hub at London, and AA's major hubs at Dallas, Miami and Chicago. Slots were to be made available at times that were suitable for transatlantic travel. As the demand for slots was likely to outweigh the supply, a methodology was proposed to allocate slots to the airlines which were most likely to provide effective competition to the BA/AA alliance.

There was however a concern that simply making slots available would not necessarily prevent the abuse of market power on the hub-to-hub routes. To further encourage entry it was proposed that BA/AA's frequencies should be capped for a 6-month period. The cap would only apply should new entry occur.

In the BA/City-flyer Express merger the competition concerns were primarily about BA's increased hub strength at Gatwick. The CC sought to reach a balance between recognising the benefits of an enhanced network and providing access for new entrants. They therefore proposed to cap BA's slot holding for a limited period of time (five years) in order to create additional opportunities for new entrants to obtain slots through the normal slot allocation process. One of the main aims of the cap is to provide increase the opportunities for new entrants to obtain slots at peak times. These undertakings have yet to be finalised.

NOTES

1. See Steven Morrison and Clifford Winston, "The Evolution of the Airline Industry", Brookings Institution, 1995.
2. OAG 1997
3. IPS 1995

UNITED STATES

Department of Justice, Antitrust Division

1. Summary of the regulatory regime for air services

1.1 Regulation of licensing and entry

(1.1) What are the regulatory restrictions (if any) on new domestic entry? What licensing requirements exist? Are their limits on the total number of domestic competitors?

There are no regulatory restrictions on new domestic entry. New entrants must obtain an operating certificate from the Department of Transportation (DOT), which requires that entrants meet certain safety and financial standards. There are no limits on the total number of domestic competitors.

(1.2) What restrictions exist on the provision of international services? What restrictions exist on existing airlines in the expansion of international services? What restrictions exist on new entry in international services? Can international airlines provide domestic services (such as “cabotage”)?

Entry on international routes is governed by bilateral aviation agreements. Traditionally these agreements have limited the number of carriers that could serve international routes, the routes that could be flown, and in some cases the number of frequencies on each route. The current US-UK bilateral (commonly known as “Bermuda II”) is an example of such an agreement. In recent years the United States has negotiated “open skies” treaties with a number of countries (e.g., Belgium, Germany, Netherlands), which eliminate restrictions on entry and reduce price regulation. At this time no other country has cabotage rights in the US.

(1.3) Are their limits on the prices or terms of conditions that airlines can offer? Are their restrictions (e.g., for environmental reasons) on the types of planes that can be flown or the types of services that can be offered that might have competition implications? Are there controls on the ownership of airlines? If so, please explain

There is no regulation of domestic prices. (DOT does have certain consumer protection regulations relating to fare advertisements.) All aircraft will soon be required to meet stricter noise requirements. This regulation has been phased in and apparently has had minimal if any competitive impact. Some airports also have curfews that restrict operations during certain hours. Ownership of US carriers by non-US citizens is limited to 25 percent of the airline’s voting stock.

(1.4) Are there exemptions or exceptions in the application of competition law to the airline industry (such as an exemption for international air agreements)? If so, please explain. Who has primary

responsibility for enforcing competition law in this sector -- the competition authority, a sectoral regulator, or some combination? If jurisdiction is shared, how are conflicts resolved?

The Antitrust Division of the Department of Justice (DOJ) has primary responsibility for enforcing competition laws in the airline industry. DOJ reviews all airline mergers and takes enforcement action with respect to antitrust violations such as price-fixing and predatory pricing. The Department of Transportation has authority to review agreements relating to international service, and may grant antitrust immunity to such agreements. DOT also has authority to take action against unfair or deceptive practices and unfair methods of competition by airlines. (DOT has, for example, used this authority to issue rules regarding computer reservation systems.) DOJ and DOT consult regularly about competition issues under their jurisdiction.

2. Competition analysis

2.1 Market definition

(2.1) *In analysing competition issues in the airline industry, what air transport services markets have you identified? How did you make that determination? Most countries focus on “city-pair” markets, but for cities with more than one airport, these airports may not be viewed as close substitutes from the perspective of travellers -- for which cases is it more appropriate to focus on “airport-pair” markets?*

DOJ has concluded that the relevant geographic market for analysing airline transactions is at least as small as a city-pair. Airline service is priced and marketed on a city-pair basis, and few passengers, whether travelling for business or leisure, can or will substitute travel in a different city pair if prices increase. Whether a particular airport in a city is a separate market depends on a fact-specific analysis of competition between the two airports. In the AA/BA case, for example, DOJ has determined that London Heathrow Airport is a separate market because an analysis of fares in city-pair markets with service to both Heathrow and Gatwick showed that most of the high fare (*i.e.*, time sensitive business) passengers chose Heathrow service.

(2.2) *Airlines typically seek to distinguish between many classes of customers. In your analysis which classes of consumers have you distinguished as separate markets? How did you arrive at that determination? Were your competition concerns focused on a particular class of consumer (such as time-sensitive business travellers?) Did you distinguish non-stop as a separate market from other connecting services?*

DOJ has concluded that there are certain time-sensitive passengers, often referred to as business travellers, who place a high value on their time and are willing to pay a premium for non-stop service. For such passengers, non-stop service is a separate market, *i.e.*, these passengers would not substitute connecting service if a non-stop monopolist raised prices above competitive levels. In our analysis of AA/BA, for example, we found that in markets with both non-stop and connecting service to London a large percentage of passengers in the highest fare classes (first, business, unrestricted coach) travel non-stop, indicating that non-stop service is a separate market for such passengers. In addition, evidence indicates that most corporate travel policies allow business travellers to take non-stop service even where connecting service is less expensive.

- (2.3) *Airlines also seek to lower the elasticity of demand for their services through loyalty programs such as frequent-flyer programs, travel-agent incentive programs, or through direct negotiation with large customers. Are such programs important in your country? Have they materially changed the nature of demand for certain airlines, particularly at “hub” airports?*

Loyalty programs are prevalent in the United States. Because failure to meet market share targets may result in the loss of travel agent commission overrides (additional commissions paid to agents reaching the market share targets) or corporate discounts in all the markets served from a hub, loyalty programs create a greater incentive to sell or use the hub carrier, even in those markets where there is competitive service at lower fares. Similarly, because there are many more opportunities to earn miles in the hub carrier’s frequent flyer program, passengers at the hub have a greater incentive to take the hub carrier rather than a competitor. Loyalty programs can be used to disadvantage smaller carriers in a city, and there is evidence of hub carriers using these programs to specifically target new entrants. For example, the hub carrier may offer bonus frequent flyer miles in city pairs served by an entrant or offer travel agents overrides tied to achieving a high market share in such city pairs. It can be difficult to separate the effects of such programs from the more general effect of large departure share. Even absent loyalty programs one would expect the hub carrier to carry a disproportionate share of traffic due to its large share of frequencies in most markets (which passengers, particularly business passengers, prefer because it gives them flexibility in arrival and departure times) and the marketing advantages created by greater consumer awareness of their service.

- (2.4) *To what extent does inter-modal competition (such as high-speed train service) discipline airline pricing? Does the level of competition (intra-modal or inter-modal) vary in a systematic way with the distance travelled?*

There is no high-speed train service in the US. It appears that, except for very short haul markets, inter-modal competition from rail service or driving does not effectively discipline airline pricing.

2.2 Barriers to entry, expansion and exit

- (3.1) *For a given route, are there barriers or restrictions that prevent an expansion of services by existing carriers (such as constraints on the availability of take-off and landing slots)? In the case of international routes, do international agreements prevent an expansion in services by existing carriers? If so, please explain.*

There are only four slot-constrained airports in the United States -- JFK and La Guardia in New York, Chicago O’Hare, and Washington National. As explained in 1.2 above, some bilateral restrict expansion of service on international routes.

- (3.2) *For a given route, which airlines have you identified as the most likely potential entrants? Is new entry (on a given route) restricted due to restricted access to slots, terminal facilities, ground-handling facilities, computer reservation services, or some other reason? To what extent is new entry on international routes restricted by international agreement?*

In most domestic US City pairs the most likely potential entrants for non-stop service are carriers with a hub at one of the endpoints. A non-hub carrier may be able to offer viable non-stop service in markets where there is a large volume of local traffic. (Southwest Airlines serves many such markets.) Competing connecting service in a city pair may be offered by any carrier with a hub that allows for non-

circuitous connections. Although, as noted above, few airports in the US are slots constrained, at some congested airports carriers have reported difficulty obtaining sufficient gate and terminal facilities to begin or expand service. Restrictions on international entry are discussed in 1.2 above.

- (3.3) *Airlines can often lease aircraft, terminal services and computer reservations services. What are the most important sources of sunk costs of entry? What is the magnitude of these sunk costs?*

Airlines can generally lease sufficient airport facilities for small-scale entry on a short-term basis. Facilities for larger scale entry may require commitment to a long-term lease, or in some case construction of new facilities. Airlines are also generally able to lease aircraft, although the availability of particular types of aircraft varies over time. An important source of sunk costs are marketing and distribution expenses, including advertising, marketing to travel agents, and the expense of introductory promotions. These costs can be significant, particularly for an entrant that must spread the costs over a small passenger base.

- (3.4) *To what extent is the threat of predatory pricing a deterrent to new entry or to vigorous competition? Is the prevention of predatory pricing ex post (i.e., after a merger has been approved) of more-than-average difficulty in the airline industry (because, for example, of the ease with which airlines can increase the number of discount seats)? Does the existence of multi-market contact between airlines affect the extent of competition between them?*

In May, 1999, the Department of Justice filed suit against American Airlines for predatory practices in response to entry by low cost carriers at its Dallas-Ft. Worth hub. The complaint alleged that American had increased capacity and reduced fares in order to drive out the new entrants. After the low cost carriers exited, American recouped its losses by reducing capacity and raising fares. DOJ is investigating similar conduct by other hub carriers. In addition, DOT is considering rules aimed at predatory conduct under its authority to prohibit unfair methods of competition. There is some empirical literature suggesting that increased multi-market contact in the airline industry lead to higher fares. This is consistent with evidence from the ATP case (discussed in 4.2 below), in which the ability of airlines to punish a carrier by filing retaliatory fares in the latter's hub market facilitated collusion.

- (3.5) *Is there an asymmetry in the willingness to exit a market between a hub-and-spoke operator and a regional feeder or "point-to-point" airline (because the loss of a spoke on a hub-and-spoke network may reduce the traffic and therefore the profitability of the remaining network)?*

Hub carriers sometimes continue to serve city-pair markets that, based upon revenues from local traffic alone, are not profitable. They are able to maintain service, however, because of the revenues from passengers connecting over the hub. A carrier serving such a market on a point-to-point basis (i.e., with little or no connecting traffic) would likely exit.

2.3 Competitive effects of mergers and alliances

- (4.1) *In considering airline mergers and alliances have you sought to quantify the anti-competitive effects? What anti-competitive effects were forecast? Were the forecasts accurate?*

Department of Justice economists have conducted empirical studies of two mergers that occurred during the mid-1980s -- Northwest/Republic and TWA/Ozark. In both cases, DOJ urged that the mergers

are disapproved and DOT (which had merger authority at the time) allowed the transactions to proceed. The studies found that fares increased eight-ten percent in those city pairs where the merger eliminated competition between the only two non-stop carriers.

- (4.2) *In considering airline mergers and alliances what consideration was taken of potential explicit or implicit co-ordinated behaviour amongst the surviving airlines ex post? Are there factors in the airline industry, which might particularly favour such co-ordination? What are these factors?*

The ability of the remaining firms in a market to engage in co-ordinated behaviour after a transaction is an important consideration in analysing any merger. This is particularly true where, as in the airline industry, the industry has characteristics conducive to successful co-ordination and there is a history of such behaviour. Factors conducive to co-ordination in the airline industry include homogeneity of service, instant access to information about fare changes, and the ability to punish airlines that deviate from the co-ordinated fare level (e.g., by filing discounted fares in the offending carrier's hub markets). In 1992, the Department of Justice sued eight major airlines and their jointly owned fare dissemination service (Airline Tariff Publishing Co.) for disseminating future fares in order to reach agreements on fares. The case was settled with a consent decree that prohibits the airlines from disseminating information on future fare actions.

2.4 Efficiency benefits from alliances and mergers

- (5.1) *The efficiency benefits from airline mergers and alliances might include more efficient connecting services, enhanced value of the frequent-flyer program, more efficient use of terminal facilities and ground-handling facilities and elimination of double-marginalisation. What efficiency benefits have been claimed in practice? Have these benefits been quantified?*

The primary benefits that have been claimed for mergers and alliances are the creation of new on-line connections and cost savings associated with consolidation of airport facilities, ground-handling arrangements, and joint buying. The benefits of new on-line connections are difficult to quantify, and depend in part on the degree to which the two airlines co-ordinate to provide "seamless" service for passengers. Benefits from such "new" service are greater in international alliances, where neither partner can provide service on its own due to bilateral restrictions. In domestic US markets, on the other hand, such entry restrictions do not exist, and all but the tiniest city-pair markets already have on-line service. Airlines are able to achieve some cost saving efficiencies through mergers or alliances, although these may be less than predicted because of difficulty combining facilities (due to airport constraints) or labour forces (due to union contracts).

- (5.2) *International alliances allow airlines to take advantage of certain efficiency benefits in circumstances where national laws prevent or discourage full merger. What efficiency benefits of international alliances have been claimed?*

The primary consumer benefit from international alliances is the creation of new on-line service in many markets that the partners could not serve by themselves due to bilateral restrictions. There may also be some cost savings achieved through facility consolidation and joint handling arrangements. Because there is typically little overlap between the partners in an international alliance, however, such cost savings are likely to be small.

2.5 *Competition issues at hub or dominated airports*

- (6.1) *Competition concerns in airlines have particularly arisen in relationship to “hub” airports in which a significant proportion of the passenger movements is accounted for by a single airline. To what extent have such concerns arisen in your country? Is airline dominance of an airport of concern if the airline faces adequate competition on each individual route it flies? Would the dominance of an airline at an airport be of concern in the absence of loyalty programs such as frequent-flyer programs or travel agent commission override programs?*

Hub dominance is a significant competitive concern in domestic US markets. Airlines face no non-stop competition on most routes out of their hubs. The primary exceptions are the handful of routes where another carrier’s hub is at the other endpoint. This lack of non-stop competition is due primarily to the large natural advantage a hub carrier has because of access to flow traffic over the hub. This advantage may be reinforced by marketing tools such as frequent flyer programs and overrides, although it is unclear whether the elimination of loyalty programs would, by itself, significantly increase competition on hub routes.

- (6.2) *What factors might erode the dominance of an airline at a single airport? Can a single airport act as a hub for more than one airline? In those airports where there are two or more dominant airlines, is the competition between airlines more or less intense?*

The primary factor that would erode the market power of a carrier at its hub is new entry. Where entry has occurred on hub routes, particularly entry by low-cost, low-fare carriers, prices have fallen dramatically. Examples of such new entry include ValuJet at Atlanta (Delta’s hub) and Southwest at St. Louis (TWA’s hub). The most significant two-carrier hub is O’Hare, where both American and United operate hubs. At other airports where two carriers have operated hubs in the past, one of the hub carriers has exited (e.g., Continental from Denver where United also has a hub, Eastern from Atlanta where Delta has a hub) or the two carriers have merged with each other (e.g., Northwest/Republic, TWA/Ozark).

2.6 *Competition issues in related services*

The provision of air transport services requires the input of a number of complementary (*i.e.*, vertically-related) services, including terminal services, ground-handling services, computer-reservation services, travel agent services and so on. In principle, a firm, which is dominant in the provision of these services and vertically integrated into the provision of air transport services, has both the incentive and the ability to restrict competition in air transport services.

- (7.1) *Have cases arisen in which an airline (or group of airlines) has acquired a dominant position in the provision of these related services? In these cases, has it been necessary to impose special restrictions on the behaviour of these integrated firms to ensure that competitors have non-discriminatory access to the related services? Have these restrictions been successful? (In other words, is it possible to effectively control the access to competitors to the dominant services provided by an integrated rival?) Have there been cases where an airline has been forced to divest itself of these related services?*

The only case in which the competitive effects of airline ownership in related service industries has arisen in the United States involves computer reservation systems (CRSs). The Department of Transportation, using its authority to regulate unfair or deceptive practices, has issued rules governing the

operations of computer reservation systems. The rules prohibit CRSs from biasing screen displays in favour of their owners or otherwise discriminating against other carriers.

- (7.2) *In some countries there sometimes appears to be a link (perhaps informal) between the national flag carrier and a major national airport. What mechanisms are in place to ensure that airport facilities (such as slots and gates) are allocated in a competitively neutral manner to carriers? Where the airport has tended to favour the national flag carrier, how might this change the incentives for foreign airlines to enter an alliance?*

The United States does not have a single national flag carrier. In addition, only two international gateways in the US (JFK and O'Hare) are slot constrained. DOT rules specifically provide for allocation of slots for international service in a competitively neutral manner.

- (7.3) *Specifically in the case of airline mergers and alliances, have cases arisen in which an airline alliance or merger threatened to restrict competition or create a dominant position in these related services?*

To date, this issue has not arisen in connection with US airline mergers and alliances.

2.7 Remedies

- (8.1) *In challenging or approving mergers or alliances what remedies or conditions have been imposed? Has divestiture been required? Of what services? Have these remedies proved successful?*

The most effective way to remedy the anti-competitive effects of a merger is to impose structural conditions in order to allow other carriers to replace the competition lost through the transaction. For example, American was required to divest certain US- London routes when it acquired TWA's US-London authority, and USAir was required to divest its London authority when it was partially acquired by British Airways. In the AA/BA case, DOJ advocated the divestiture of a significant number of Heathrow slots to allow entry by new competitors. In some cases in the airline industry, there may be no structural solution that would result in new entry. For example, it is highly unlikely that an entrant would begin serving a route with the hubs of two alliance partners at either end (e.g., Dallas-Ft. Worth - Heathrow) even if slots and facilities were made available. In such cases, DOJ has advocated that the alliance not be granted antitrust immunity for operations on such routes.

2.8 Other issues

- (9.1) *Has your consideration of airline mergers and alliances involved international co-operation between competition authorities? Has this co-operation been successful? Please explain.*

The Department of Justice has consulted extensively with both the EU's DG-IV and the UK's Office of Fair Trading in connection with the proposed AA/BA alliance. Division staff consulted regularly with OFT and DG-IV, both by phone and in person, concerning issues such as market definition, entry analysis, efficiencies, and remedies. In addition, to the extent allowed by statute, the agencies shared information gathered in the course of our investigations. In the end, the analyses of the three competition

agencies, while not identical, were in agreement on the most important issues. For example, all three adopted a market definition that included a non-stop market for time-sensitive passengers. In addition, there was agreement that a critical element of relief was the divestiture of a significant number of slots at Heathrow to allow new entry.

(9.2) *In some countries the final decision of the competition authority is subject to approval by a higher authority which is authorised to take into consideration wider “public interest” concerns. Has the opinion of the competition authority been rejected or overturned in airline cases? Has political pressure been brought to bear to influence the outcome of competition issues in airlines?*

There is no higher authority that must approve the decisions of DOJ or DOT. DOT’s statutory power to grant exemption from the antitrust laws for agreements relating to international service, discussed above in 1.4, requires consideration of broad public interest concerns which include the competitive effects of such agreements.

EUROPEAN COMMISSION

1. Introduction

The airline industry has been challenged, during the last years, by the opening of the European market, the adjustments required to deal with the new competitive environment and the pressure of the US open skies strategy. The aim of a recent Commission communication¹ (May 1999) was first to assess the progress which has been made and second to identify the initiatives which can contribute to the competitiveness of the industry.

European airlines have developed innovative strategies in order to adapt themselves to market growth and competition challenges. During the last decade they have achieved considerable productivity improvements which now permits the sector to create new jobs. However they still suffer from relative structural fragmentation and financial fragility when compared to their main competitors, notably North-American carriers.

Liberalisation and globalisation make the market increasingly competitive and require airlines to undertake large restructuring efforts. The Commission authorised state aid as a one-off measure to help national carriers to restructure during the transition to the liberalised single market. This transition is now over.

The airline industry suffers from the same handicap as other industries in Europe, justifying general initiatives enhancing the efficiency of the economic environment². The present communication identifies those deficiencies of the regulatory framework of air transport activities, which stand in the way of adjustment by European companies. To help the industry towards this strategy, the European Commission identifies the following policy orientation:

- the Commission uses all the tools at its disposal to ensure integration of the European market. This includes the application of EC competition law to prevent attempts to re-fragment the market through public intervention or anti-competitive alliances or mergers. The monitoring of public and private behaviour, the transparency of Community legislation and the definition and dissemination of best practices on a number of issues such as Public Service Obligations, are important elements in this regard;
- the elimination of technical obstacles to trade, in particular by faster and more efficient harmonisation of safety rules through the creation of a European Aviation Safety Authority and by giving impetus to ICAO activities in the environment field will help the industry;
- the fragmentation of the internal market results also from the lack of an external dimension. Ownership rules and the bilateral agreements system create obstacles to industry restructuring at European level and to fair competition with the open skies countries. These economic consequences add to legal justifications for a genuine external dimension permitting inserting the alliances within a fair European framework.

The present inefficiencies of the market and the sensitivity of the sector to economic cycles and external shocks lead the Commission to develop its function as an observatory of the European air

transport industry. For this purpose it is carrying out a long-term project for the creation of a comprehensive database of the European airline industry. This will increase the quality and availability of data and analyses on capacity, traffic, financial performance, productivity, industry and route structure, airports, and employment that are necessary to support a policy aiming at safeguarding the competitiveness of the industry. Information and analyses on industry trends will be available to the general public on the Commission's Internet site. This tool will enable the Commission to monitor the evolution of the industry in general and of air fares in particular, focusing on routes and airports that give rise to *prima facie* excessive operating ratios.

2. Regulatory regime for air services: deregulation of the industry

In the last ten years the European air transport industry has undergone a process in several stages of transition from tight regulation, based on bilateral agreements and duopoly with virtually no competition, towards a single market. This resulted in the reduction of the discretionary powers of national authorities and the extension of the possibilities for air carriers to decide, on the basis of economic and financial considerations, fares, new routes and capacities to be offered on the market. As a result air transport within the European Economic Area is now governed by common rules which provide for licensing, market access, pricing freedom and the application of competition rules.

The Commission assessed these developments in 1996³, noting that the liberalisation process has mutated the economic environment for air transport by making it an increasingly competitive market. The first three years of liberalisation resulted in gradually growing competition, in particular the number of carriers considerably increased. Liberalisation has brought clear benefits to consumers. However, some shortcomings might weaken the liberalisation process' ability to deliver to the consumer better services at lower cost. The 1996 report highlighted the problem of capacity restrictions and high costs for infrastructure as well as the contradictory and unsatisfactory trend concerning fares. While promotional fares have become more widespread, the prices of fully flexible fares have increased. There are still large differences in fares per KM across Europe. Recent developments after 1996 confirm the trend and are outlined in *Annex I*.

Whilst the increasingly competitive environment has brought benefits to consumers, some of the responses by the airlines to this environment could undermine these benefits. The proliferation of tariffs, over-booking, the availability of seats at the most publicised promotion fare, the growth in FFP's, code-sharing and airline alliances can all make it harder for consumers to compare competing offers. As competition increases, market transparency needs to be assured, if consumer confidence is to be maintained. A competitive and efficient air transport market depends as much on well-informed consumers, in a position to make rational choices, as efficient providers. The recent initiatives on denied boarding and computerised reservation systems have gone some way to address these issues. The Commission has also commissioned a study to examine the information passengers need to make rational choices.

In terms of the regulatory framework, the Commission has noticed that, despite the provisions laid down in the third package, there are areas where Member States still tend to have differentiated practices which can impede the proper functioning of the single market.

In the case of public service obligations, Article 4 of Regulation 2408/92 provides that under particular circumstances the free access to traffic rights within the Community can be limited on the grounds of public interest. However, different ways of dealing with public service obligations in the Member States may lead to some domestic markets being less open and liberalised than others.

Leasing of aircraft registered outside the Community is another area of concern. Leases are regulated by Article 8 of Regulation 2407/92 on licensing of air carriers, which requires that aircraft used by an air carrier must be registered within the Community. However, in order to meet temporary needs of the air carrier or otherwise in exceptional circumstances, a Member State may authorise short time leases of aircraft registered in non-EU countries. The Commission has noticed that Member States follow different practices for the implementation of this provision. Since non-EU countries usually adopt less stringent rules for the licensing of aircraft, different practices in this area result in very different liability, environmental and safety standards across the Community. In this light the Commission, in co-operation with the member States, is contemplating preparing guidelines to clarify its interpretation of the provision on short-term leases of non-EU aircraft.

As a follow-up to the 1996 Communication, the Commission is now investigating the regulatory and commercial barriers that restrain the complete development of competition in the aviation single market. For this purpose it carried out a study on the impact of regulation and certain commercial practices on the development of competition in the air transport market. The study identifies and analyses factors inhibiting the growth of small and medium sized airlines following liberalisation with a view to developing policy options for removing or reducing barriers to competition. In this context a number of small and medium sized airlines have been interviewed and asked to assess the liberalisation process and its shortcomings. The study found that there is an overall consensus that the present regulatory regime is working well. However, the following matters emerged as areas of concern, in order of priority:

- access to slots/airport capacity problems. This seems to be the single most important barrier, especially for airlines seeking to compete “head-to-head” with the flag carriers. Barriers arise from the functioning of the slot pool and the slot allocation mechanism. The pool, created by Community legislation⁴, is considered too small and cannot be expected to generate sufficient slots to enable a new entrant to compete against the established incumbents. Things are made even worse by incumbents’ ability to indirectly control additional slots through franchisees or alliance partners. Moreover small and medium sized airlines feel that slot co-ordinators, who are frequently former employees of flag carriers, are biased in slot allocation;
- loyalty schemes: they comprise both frequent flyer programmes (FFPs) and corporate discounts, but the majority of airlines’ concerns relate to FFPs. The effectiveness of FFPs stems from the asymmetry between the interest of the corporate traveller, who enjoys the FFP benefits, and the employer, who pays for the ticket. The key barriers reside in the fact that FFPs favour airlines with large networks, which offer travellers greater chances to accumulate and use FFPs points. In contrast there is little scope for small and medium carriers to operate such schemes, because their networks are too small to make them attractive. For these airlines the administrative costs and the costs in lost revenue of flying frequent flyers for free and therefore losing the potential revenue from their seats are high compared to the expected commercial advantage. As a consequence only larger airlines are able to exploit FFPs, by attracting more traffic and sustaining higher fares;
- differences in regulatory environment: several of the interviewed airlines are concerned about the attitude of national authorities in some Member States towards emerging competition, in particular in the areas of slot allocation, negotiation of bilateral agreements covering access to non EU markets, award of Public Service Obligation contracts and other special situations requiring ad hoc decisions;
- ground handling charges and quality. Most of the airlines complain about the high cost and low quality of ground handling services. They fear that the ground handling liberalisation directive may not be sufficient to foster competition in the sector, since it includes too many

safeguards, does not ensure enough competitors and does not apply to airports with less than two million passengers.

3. Competition analysis

3.1 Market definition.

The Commission has made the usual distinction between time-sensitive business type passengers and other passengers. The approach to market definition has been based on city pairs, and in short haul routes, only non-stop flights have been considered as comprising the relevant market. Regarding mergers in particular, analysis needs to take account of both 'route-based' competition (*i.e.*, generally, city or airport pairs) and wider aspects such as 'hub-to-hub' and 'network density' issues where these arise.

The Commission is considering two additional issues with respect to market definition. Firstly, whether indirect flights should be included in the relevant market for long-haul routes, in particular in transatlantic routes. Secondly, whether overlapping catchment areas of airports should lead to consider flights departing from different airports as belonging to the same market. The question arises in a situation where a substantial proportion of passengers currently flying from airport A would in fact be indifferent to flying instead from airport B. Since it would not be possible to price discriminate among passengers, would the willingness of some to substitute airport B for airport A constitute enough of a constraint for pricing flights from airport A?

Regarding the distinction between customer classes, our most recent experience has been with mergers involving (primarily) charter operations rather than scheduled ones (*cf* KLM/Martinair, Preussag/Thomas Cook and Airtours/First Choice). Our experience is that in general, charter flights are not effective substitutes for scheduled ones, especially for business (time-sensitive) travellers who, as a rule, form a separate product market. Within the 'leisure' or non-time-sensitive market a distinction may need to be made between sales to package tour operators and those direct to individuals. Tour operators rarely if ever use indirect flights, whereas individuals often do so. Nor are scheduled flights necessarily a substitute for charter flights for non-time-sensitive passengers, at least so far as sales to tour operators are concerned, due to differences in destinations served and price considerations. However there is increasing convergence as many charter airlines now sell tickets direct to the public and some offer regular schedules. A case-by-case approach is required.

In the area of loyalty programs, there is no direct experience as far as merger control is concerned. But they are increasingly significant with the development of alliances. So access to an incumbent's FFP may need to form part of a remedy for a dominant position, since it can be a factor in ensuring that new entry, or expansion by existing competitors, is effective.

Intermodal competition is relevant in some circumstances. For certain journeys (e.g. London-Brussels and London-Paris, and possibly some others within Continental Europe) high-speed passenger train services are an effective substitute for air services.

3.2 Barriers to entry: Potential competition

For flights between the Community and third countries, the restrictions are the usual ones arising from bilateral arrangements.

In certain cases, the Commission has found that airports within the Community may be slot constrained, in particular at peak times. Slots at peak times appear important to be able to access the profitable business segment of traffic. There are a number of other commercial barriers deterring entry: extensive FFP's, overrides to travel agents, overall arrangements with large corporate customers, convenient display of competing flights on CRS screens. A large number of frequencies on a given route offered by incumbents appears to be of particular significance.

The Commission finds that an airline with a hub at either end of a route might be well placed to enter that route. But the decision of entering effectively depends on a large number of factors, among others, the priorities fixed to enlarge the network. There are also low cost carriers with no network strategy, that in principle would enter on a profitable point-to-point route. On the other hand, these carriers often tend to use cheaper secondary airports.

As regards mergers in particular, where airports are congested (e.g. in particular, LHR) then slot divestment to potential entrants on the routes/areas in question is likely to be a necessary and important part of a remedy for a dominant position. But other measures (e.g. frequency or capacity caps or temporary reductions, open interlining and code-share agreements, access to terminal facilities, etc.) may also be required in addition in order to ensure that entry takes place and is effective.

3.3 *Competitive effects of mergers*

Where one or both merging parties participate in alliances a merger's effect on competition between alliances and with the other alliance members will need to be assessed, as well as the more direct loss of competition on overlapping routes. This will need to include an assessment of hub-to-hub effects and related 'network' issues, especially where the merger involves the transfer of one or both merging parties from one alliance to another. In such cases the questions of which of the parties' shares on the overlapping routes should be the focus of the divestment remedy, and whether a remedy is also needed on routes on which only one of them is present, also arise.

3.4 *Efficiency benefits from mergers*

As a rule, efficiency considerations are not directly relevant for EU merger control.

3.5 *Competition concerns and remedies*

In a number of cases, in particular merger cases and alliances, the Commission has been concerned by the creation or reinforcement of dominant positions in direct flights between city-pairs. Initially, the Commission thought the divestiture of slots could remedy these situations. Experience has shown that additional measures are required. In its latest cases, it has sought for measures that would effectively facilitate entry into these routes by requiring the dominant incumbent to divest slots, including slots at business peak times, and reduce frequencies to the extent that a new entrant would come into the route in question. The aim being to give a new entrant effective access to actual passenger traffic, and in particular to business traffic, for an initial period of time. In addition, the incumbent would be required to interline with the new entrant and allow him to join its FFP or joint FFP of the merged entity. The incumbent would also refrain from applying loyalty schemes in its relations with travel agents, and finally would ensure that the display of code share flights would be limited to one line when first CRS screen is saturated.

The use of overrides or more generally, schemes rewarding loyalty of travel agents by a dominant carrier are considered illegal because of the foreclosure effect they have in the markets for air transport services. In this case, dominance is established in the market between carriers and travel agents.

As regards mergers in particular, unless the overlaps are very limited and only on very popular routes, a 'package' approach (e.g. slots at any congested airports plus – temporary - frequency reductions or freezes, plus interlining, access to codeshare and frequent flyer programmes etc) seems necessary to ensure that entry is timely, long-lasting and on a sufficient scale, rather than slots alone (*cf. Sabena/Swissair* – no new entry despite a requirement to make slots available, as routes were thin and incumbency advantages considerable). In some cases, where the overlap is very substantial and potential entrants few and weak, prohibition of the merger may be the only answer.

Annex 1

DEVELOPMENTS SINCE FULL LIBERALISATION

A initial view of the impact of liberalisation is given by the trend in the number of carriers within the European market. Indeed the number of scheduled carriers has grown steadily between 1992 and today (figure 1), showing that more carriers are now active, providing more services. Data on entry and exit of carriers in the market place (figure 2) pinpoints the dynamic and competitive nature of air transport.

Figure 1

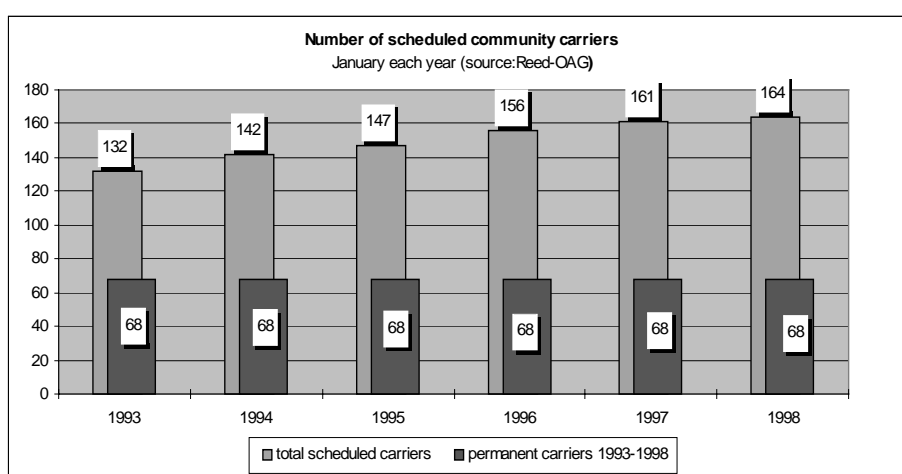
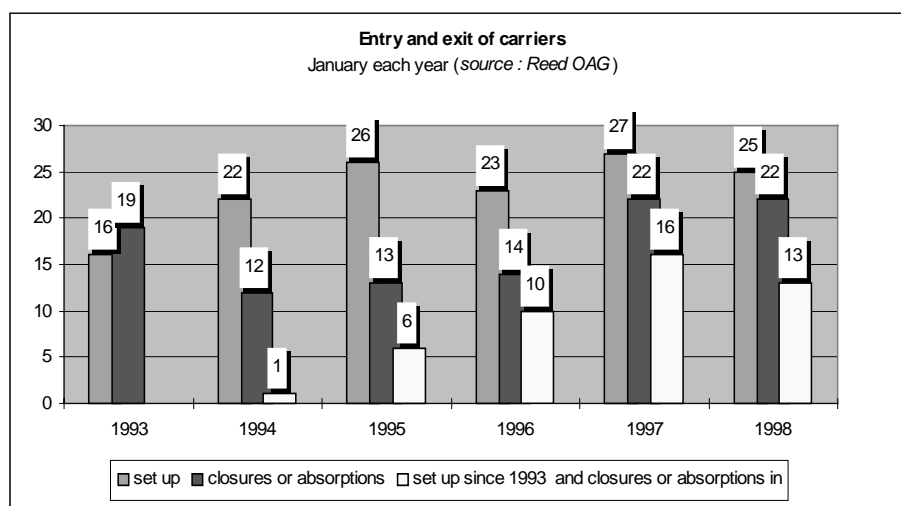


Figure 2

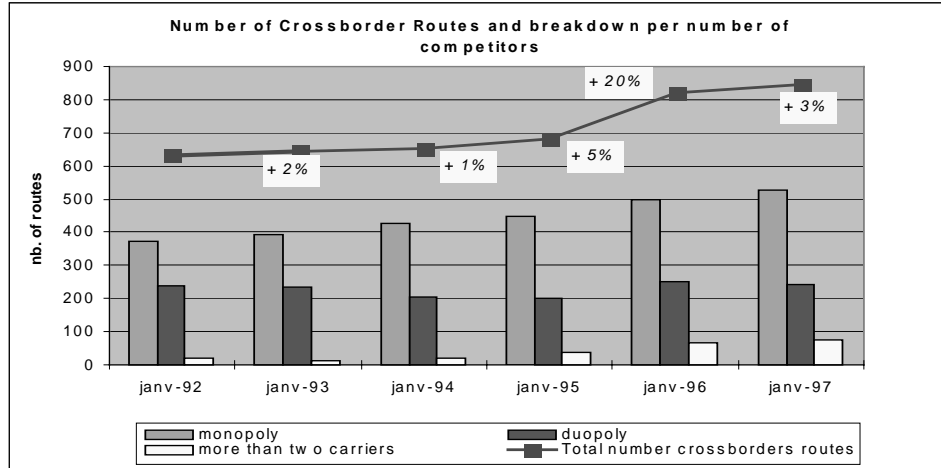
1. The development of competition at route level

The impact of liberalisation can also be seen in the evolution in the number of routes between



Member States within the Union since 1992 (cross-border, or intra-EU, routes, figure 3)

Figure 3

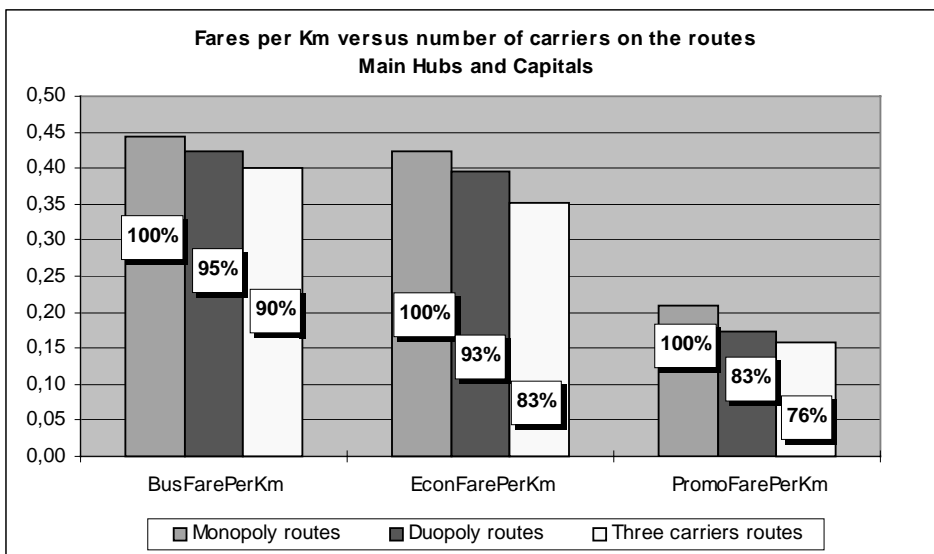


2. Evolution of airfares

The Commission Report of 1996 pointed out that, even though an increasingly large number of promotional fares became available, which increased the range of attractive airfares available to users, flexible fares kept on increasing. It clearly appears that these fares are narrowly correlated to distance but also to the degree of competition on a single route, as the following tables show.

Figure 4

This first table (average of the fares on all Community routes, values expressed in EURO on January 1997) shows that competition has a real impact on the price traveller pay for air transport. In



particular:

- the level of fares decreases when the market structure passes from monopoly⁵ towards duopoly or routes with more than two carriers. Consumers enjoy fare reductions in a range of ten percent to 24 percent, depending on the type of fare;
- fully flexible business and economy fares are in the same order of magnitude, while promotional fares are half as high.

Figures 5 and 6 compare fares on some major routes, namely average fares from 20 capitals and main hubs. It is clear from figure 6 that fares per Km depend on the distance flown. However, even taking into consideration distance, there are large differences across the European Union. In particular fares are higher from airports such as Vienna, Frankfurt, Paris CDG, Brussels, Copenhagen and Stockholm. There may be several factors explaining this situation, such as local cost levels, the degree of competition, congestion and local market conditions. Where appropriate the Commission will examine these factors in more detail.

Figure 5

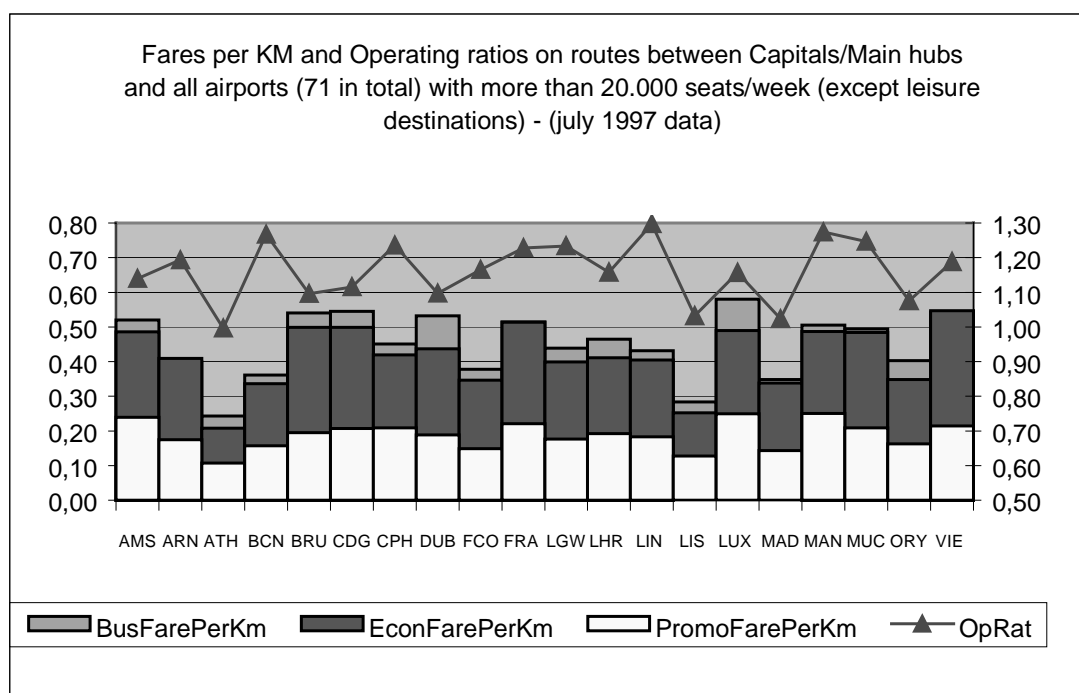
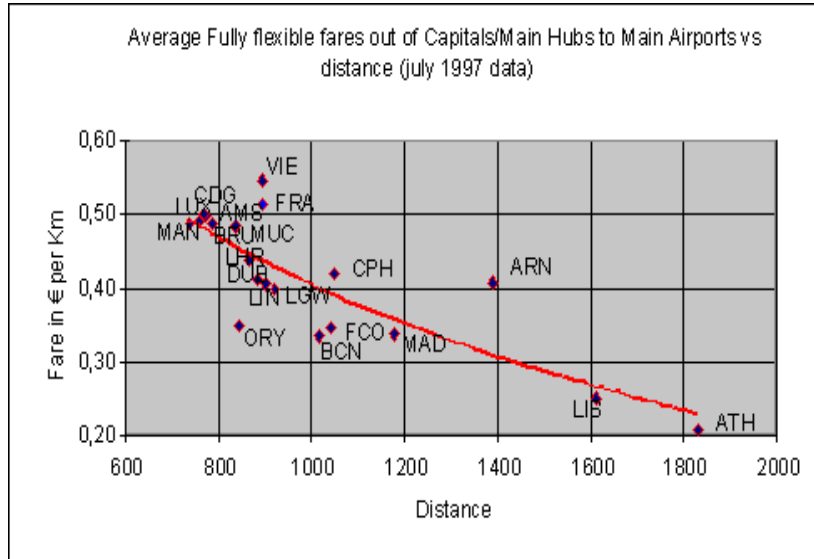


Figure 6



*Annex 2***VIRGIN/BA**

The European Commission is investigating a series of complaints it has received in relation to commissions paid by airlines to travel agents. These complaints concern a possible abuse of a dominant position by airlines operating loyalty rebate schemes which effectively tie travel agents to a dominant airline, discouraging the travel agent from selling tickets for other airlines to their customers. As a first step, the European Commission has acted on a complaint it received from Virgin and has investigated BA's incentives schemes to travel agents. It has decided to impose a fine of 6.8 million € on British Airways for abusing its dominant position as a buyer of air travel agency services from United Kingdom travel agents. For at least the past seven years BA has been offering travel agents extra commission payments in return for their meeting or exceeding their previous year's sales of BA tickets. This makes the travel agents loyal to BA, discouraging them from selling travel agency services to other airlines and has created an illegal barrier to airlines that wish to compete against BA on the U.K. markets for air transport. For the future, the Commission and BA have identified a set of principles. These are the result of fruitful co-operation between BA and the European Commission. Applying these principles will prevent BA from engaging in the type of behaviour criticised in this decision. These principles will also establish clear guidance for any other airline in a similar situation. The Commission will indeed take all measures necessary to ensure that the principles in this Decision are applied to other EC airlines in equivalent situations.

The commissions offered by BA were equivalent to a "loyalty discount" *i.e.* a discount based not on cost savings but on loyalty, of the type consistently condemned as an exclusionary abuse of a dominant position in the past. It is well established community law that a dominant supplier cannot give incentives to its customers and distributors to be loyal to it, so foreclosing the market from the dominant firm's competitors. The effect of this abuse is to try and counteract the effect of market liberalisation by maintaining the dominant airline's market share at its old levels and by penalising travel agents who divert some of their customers to relatively new competitors. Incentives of this type given by a dominant firm are clearly illegal. A dominant firm should only provide supplementary commissions to travel agents where these reflect extra services provided by the agent or efficiencies realised. The existence of these practices has prevented U.K. consumers from fully benefiting from the effects of deregulation and liberalisation of air transport.

The principles follow below. They provide guidance to any airline which is a dominant purchaser of air travel agency services and wishes to avoid infringing Article 82 EC.

1. Principles concerning Travel Agents' Commissions

- Commissions offered to different travel agents are differentiated to the extent that the differences reflect:
- variations in the cost of distribution through different travel agents; or
- variations in the value of the services provided to British Airways by different travel agents in the distribution of its tickets.

- Commissions increase at a rate which reflects:
- savings in British Airways' distribution costs; or
- an increase in the value of services provided by the travel agent to British Airways in the distribution of its tickets.
- Commissions relate to sales made by the travel agent in a period not exceeding six months.
- Commissions do not have targets that are expressed by reference to the sales made by the travel agent in a preceding period.
- Commissions increase on a straight line basis above any base line stated in the agreement.
- The commission paid on any ticket does not include any increase in the commissions paid on all other British Airways tickets issued by the travel agent.
- Travel agents are free to sell the tickets of any other airline and the goods or services supplied by any third party.

*Annex 3***ALITALIA/KLM MERGER**

On 29 June 1999 Alitalia and KLM notified their intention to progressively integrate both their scheduled passenger air transport activities and their cargo air transport activities. Under the terms of their Alliance Settlement agreement, Alitalia and KLM will act as a single economic entity as from 1 November 1999.

In authorising this concentration, the Commission has taken the view that the activities of Alitalia and KLM are complementary to a very large extent and therefore do not raise major competition issues. However, the Alliance between Alitalia and KLM raised concerns on the two routes that link the hubs of the two companies: Amsterdam-Milan and Amsterdam-Rome.

The Commission's approach to this merger is consistent to that taken to airline alliances such as LH/SAS, BA/AA, LH/SAS/UA. In the alliance cases the Commission concluded that the alliance would bring economic benefits and so could qualify for exemption under Article 81(3), however the alliance would also remove competition and create barriers to entry on the markets for travel by time sensitive passengers between the hubs of the parties to the alliance. Therefore the Commission sought remedies to ensure the conditions for entry onto the relevant routes as a condition of exempting the alliance. These remedies include frequency reductions, slot surrenders, limits on FFP's, limits on commission schemes for travel agents and corporate customers and conditions on the use of computerised reservations systems.

In this case the Commission was concerned that a dominant position would be established on the markets for direct travel by time sensitive passengers between the parties hubs (Amsterdam, Rome and Milan). The parties made undertakings which had the effect of preventing the establishment of a dominant position by creating the conditions for new entry on these routes.

Alitalia and KLM shall:

- make slots available to new entrants who apply to operate on any of the two routes in question. Alitalia and KLM will make available up to 224 slots per week. This will allow competing airlines to operate up to four frequencies (*i.e.* four return flights per day) on each route, including two frequencies at peak times;
- make extra slots available so as to allow airlines which do not currently operate at any of Amsterdam, Milan or Rome, to stop over at one of these airports and fly on to one of the two others. This will significantly increase the number of airlines that can take advantage of these undertakings to enter the Amsterdam-Milan and Amsterdam-Rome routes by connecting them to their existing network. Alitalia and KLM will make available up to 112 slots per week to this end;
- reduce their frequencies on the Amsterdam-Milan and/or Amsterdam-Rome routes when a new entrant airline starts operations. This reduction will be equal to the new entrant airline's frequencies up to a maximum of 40 percent of the frequencies operated by Alitalia and KLM;
- enter into interline agreements with the new entrant airline;

- give the new entrant the opportunity to participate in their Frequent Flyer Programme;
- refrain from tying travel agents and corporate customers in Italy and The Netherlands respectively with loyalty or other similar rebate schemes;
- ensure that, once a competing airline has entered on the route(s) in question, the first screen of the computer reservation system (CRS) is not filled with the flights of the Alliance (e.g. by displaying the Alliance flights in one line only). Consumers will be informed about the precise code-share arrangements.

NOTES

1. Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions - The European airline industry: from single market to world-wide challenges, COM/99/0182 final, 20.05.1999.
2. The Competitiveness of European Industry - 1998 Report (Office for Official Publications of the European Communities CO-17-98-556-EN-C)
3. COM(96) 514 final of 22 October 1996, Impact of the Third Package of Air Transport Liberalisation Measures.
4. Regulation 95/93/EC.
5. Monopoly at route level should not necessarily be interpreted as a failure of liberalisation. It may well be that on some newly operated routes the volume of traffic is too thin to support more than one carrier. Still liberalisation is successful, in that it allows airlines to create new markets for air transport.

UNITED STATES DEPARTMENT OF TRANSPORTATION

MULTINATIONAL AIRLINE ALLIANCES

Transatlantic alliances formed by linking US and European airline networks are rapidly developing connecting markets that have historically suffered from poor service and virtually no competitive benefits.

These alliances have resulted in improved service for millions of passengers annually, and are stimulating substantial growth in the transatlantic market.

Transatlantic traffic in connecting markets is growing at 2.5 times the rate of growth in gate-to-gate markets. Between 1992 and 1997 US airline passengers increased by 2.3 million more in connecting markets than in gate-to-gate markets.

Each of the three immunized alliances are rapidly increasing the scope of their combined networks, and each now carries passengers on a connecting basis in 3 000 to 6 000 individual city-pair markets.

These alliances are now competing for market share in large numbers of connecting markets. During the third quarter of 1997, in 2 500 city-pair markets two or more of the alliances carried 600 000 connecting passengers.

The development of transatlantic alliances is also resulting in vast consumer benefits in the form of lower fares.

For US carriers, nonstop passengers in gate-to-gate markets now account for less than 30 percent of total transatlantic traffic, and much smaller percentages in gate-to-gate routes that are network hubs for one, or particularly both, alliance partners.

The airlines' ability to continue to respond to the marketplace demand for service in the rapidly growing connecting markets is entirely dependent on the ability of alliance carriers to increase capacity in gate-to-gate markets.

1. Background

A detailed examination of data is not necessary to grasp the importance of connecting traffic to support airline services and competition across the Atlantic. Rather, a cursory review of airline schedules shows that most transatlantic service by individual airlines is from their respective domestic hubs. The exceptions are from a small number of very large cities, such as New York and Los Angeles in the US, and Dusseldorf, Manchester, and Oslo in Europe, which have very large local traffic bases.

The reason for this is straightforward. Combining network feed traffic at gateways with local passengers who travel solely between the gateways enables carriers to profitably operate more capacity than would otherwise be possible. Indeed, a very small number of transatlantic markets could economically sustain any service in the absence of network feed. The availability of network flow traffic simultaneously enhances the competitive posture of an airline in a given gateway-to-gateway market, and requires the airline to compete in many other markets for the flow traffic it seeks to support its service.

From the airline perspective, the growth and success of individual networks depends upon their ability to access traffic from as many sources as possible, both local traffic on individual spoke routes, and flow traffic that connects over the network hub. Network feed traffic fuels additional network growth. Larger networks can economically sustain service to smaller spoke cities than can smaller networks, and as the addition of new spoke cities expands traffic flows through the network, the greater network flows enable the profitable operation to still smaller spoke cities. These two phenomena feed on one another.

From the consumer point of view, networks provide two fundamental advantages. First, networks enable superior service in markets that can only be effectively served on a connecting basis. Experience has conclusively shown that interline cooperation has very limited effectiveness. Interline service involves no lasting commitment by the interline partners. Carriers are therefore reluctant to invest the time and money required to enhance such service, and consumers know this. Consequently, they strongly prefer online alternatives when available. Where only interline services are available traffic development is poor, partly because the services themselves are inferior and partly because such services are difficult to market, which means that the airlines spend little effort to develop effective pricing structures. The combination of inferior service and generally much higher prices results in little demand.

The second advantage for consumers of expanding networks is that as the networks reach into new markets, they will either provide competitive alternatives to other services that already exist, or develop new markets that other carriers and alliances will eventually be prodded by competitive pressures into entering as a means of enhancing their own traffic flows. As networks expand and overlap, they provide effective alternatives for passengers, and, thus, provide the benefits of increased competition on both service and price.

Linking networks on different continents is an efficient way for airlines to achieve their goal of increasing the reach of their respective networks and flowing more passengers through those networks. This, in turn, provides consumers with better, more competitive service. But this linking of networks does more than allow the carrier partners to flow passengers to each other. For example, the added traffic flowing through KLM's network from Northwest allowed KLM to profitably expand its network within Europe and beyond to additional cities to the benefit of passengers traveling in those European markets, and the same is true for Northwest. As a consequence of the expanded Amsterdam hub, the alliance can now offer more service to large US cities that are not Northwest hubs, and service to a relatively small Northwest US network hub city, Memphis, which now allows the alliance to offer more competitive service from the southeast US. Of course, Memphis-Amsterdam service would not be possible in the absence of large network flows.

In our examination of transatlantic alliances we have illustrated their effects with a three-step process. First, we have used segment traffic data (T-100 onboard passengers) to demonstrate that increases in traffic flows are far greater over European gateways that are networked hubs for carriers that have alliances with US carriers, either immunized alliances or code-share alliances. Second, we have used origin and destination data reported by US carriers to demonstrate that the increased traffic flows over the alliance gateways are predominantly in connecting markets, where we would expect the growth to occur if it is, indeed, stimulated by linking networks. Third, we have examined how fares have changed in transatlantic markets, distinguishing between different market sectors, and between countries that have

open skies agreements with the US and those that do not. The results of this three-step analytical process follow.

2. US-Europe T-100 traffic

Chart 1 compares total traffic moving between the US and Europe aggregated by those European gateways that are network hubs for immunized alliance partners and code-share partners versus European gateways that do not have such arrangements.

The time series starts with 1992, just before the first immunized alliance, and shows that from then to mid 1997 traffic increased by 43 percent at alliance/code share gateways compared with a seven percent increase for other gateways.

Not surprising, alliance development initially diverted some traffic from carriers at other gateways, pressuring them to respond competitively. They have responded in a variety of ways, including privatization and hub rationalization such as at Paris, and now even non-alliance gateways are showing traffic increases.

3. US-Europe O&D traffic

One question posed by the previous chart is whether new passengers traveling on alliances are new passengers or passengers that were diverted from other airlines. The answer is both to some extent, but there is clear proof that alliances have substantially increased demand.

This evidence is where the traffic growth is occurring. A fundamental objective of alliances is to link networks for the purpose of flowing passengers in previously underserved markets. This is precisely what is happening.

Chart 2 compares traffic growth in three broad connecting market sectors with growth in non-stop markets, and shows that the growth in each connecting market sector far outpaces growth in the non-stop sector. Note that this chart is not limited to alliance markets or carriers, but includes all transatlantic markets, thereby removing any doubt that alliance growth has come purely at the expense of other markets or carriers.

4. US-Europe O&D growth by foreign carriers

While we do not have a complete picture of where O&D markets foreign carriers serve, we do have such information to the extent they carry a passenger that originated behind a US gateway.

Chart 3 aggregates O&D traffic reported by US carriers according to whether a US carrier or a foreign carrier provided the transatlantic portion of service. This clearly shows that in the two behind US gateway market sectors foreign carrier traffic is increasing rapidly, just as US carrier traffic is increasing rapidly in the two behind foreign carrier market sectors.

5. Structural changes

These data show that alliances are developing traffic in historically underserved connecting markets. Indeed, we know that each of the three immunised alliances are carrying passengers in literally

thousands of connecting markets, and they now overlap one another in markets that number in the thousands.

And the growth in connecting traffic is not limited to markets where non-stop service is not available. Indeed, a large percentages of alliance connecting traffic is in markets is available.

Alliances, therefore, have resulted in pro-competitive changes in the industry structure across the Atlantic.

6. Price effects

- While the changes in industry structure suggest increased competition, is this reflected in prices charged to consumers. The answer is a resounding yes.
- Chart 4 compares fares in transatlantic markets for calendar years 1996 and 1998 (nominal fares, not inflation-adjusted fares), based on fare-basis origin and destination data filed by US airlines. We use 1996 as our base period because it was during 1996 that two of the three immunized transatlantic alliances were approved, and 1996 also represents the end of a period of escalating prices in transatlantic markets. The data are collected in four broad groups, or market sectors, as follows:
 - gateway-to-gateway markets, or markets that have nonstop transatlantic services;
 - behind gateway-to-gateway markets, or markets that involve interior US cities and foreign gateway cities;
 - gateway-to-beyond gateway markets, or markets that involve US gateway cities and cities in Europe, the Middle East, and Africa that are beyond the European gateway cities; and
 - behind US gateway cities and beyond foreign gateway cities.

Fare information for each of these market sectors is further segmented to distinguish between passengers that traveled between the US and open-skies countries and between the US and other countries across the Atlantic. We have also removed the effects of changes in traffic mix between the two years by using actual fares reported for each period, but weighting the various city-pair markets for both periods by 1998 traffic levels.

Chart 4 clearly illustrates the clear pro-consumer effects of alliances, and the relative changes from market sector to market sector are consistent with what we would expect to see as a consequence of forming alliances to link networks.

First, the open-skies markets, the deregulated markets where airlines have pricing and scheduling freedom, show much more favorable price trends.

Second, we would expect the less favorable to consumer results to be in the gateway-to-gateway markets where the formation of alliances reduces the number of nonstop competitors. The fare reductions that have nevertheless occurred may reflect a number of compensating factors, such as more connecting service competition (from other alliances), greater pricing flexibility, or the effects of added capacity in response to new traffic stimulated in connecting markets.

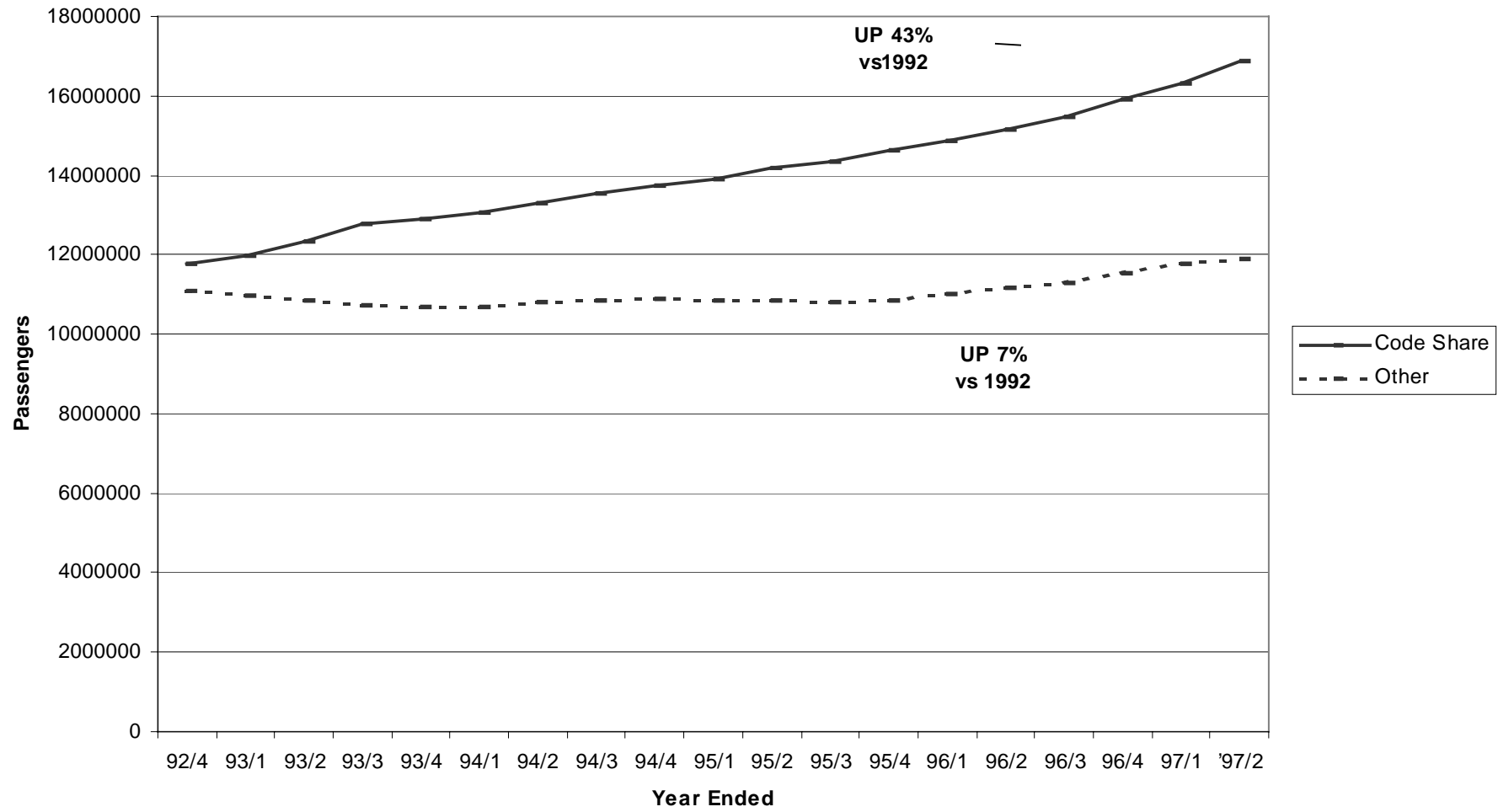
Third, we would expect the least affected connecting market sector to be the behind to gateway sector, since our industry has competed vigorously in these markets for years with their well developed hub gateways.

Fourth, and conversely, we would expect to see somewhat greater fare reductions in the gateway to beyond gate sector since the European gateway hubs are still developing. Alliance growth has greatly facilitated the development of European hubs, so we would expect to see competition increase more (and fares further decrease) over those gateways as a consequence.

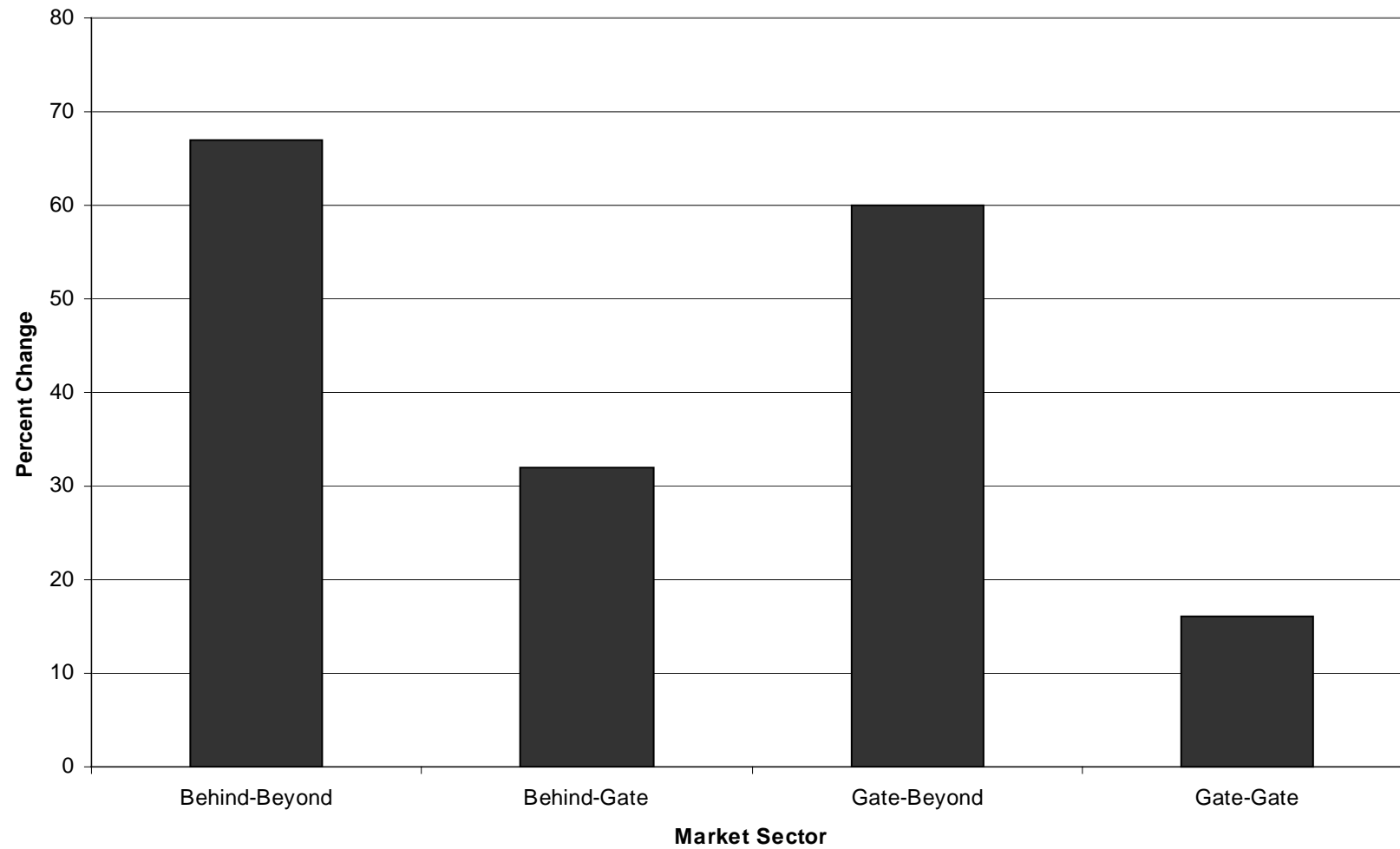
Fifth, the behind-beyond market sector is where service and competition have suffered the most over the years, so this is where we would expect to see the greatest competitive benefits as a consequence of alliance development. As indicated, we know that continuing alliance expansion is resulting in rapid growth in the number of overlap markets.

Finally, the reductions in the three connecting market sectors of non-open skies countries is also expected. While those markets are not deregulated, alliances nevertheless provide additional, competitive access to such markets.

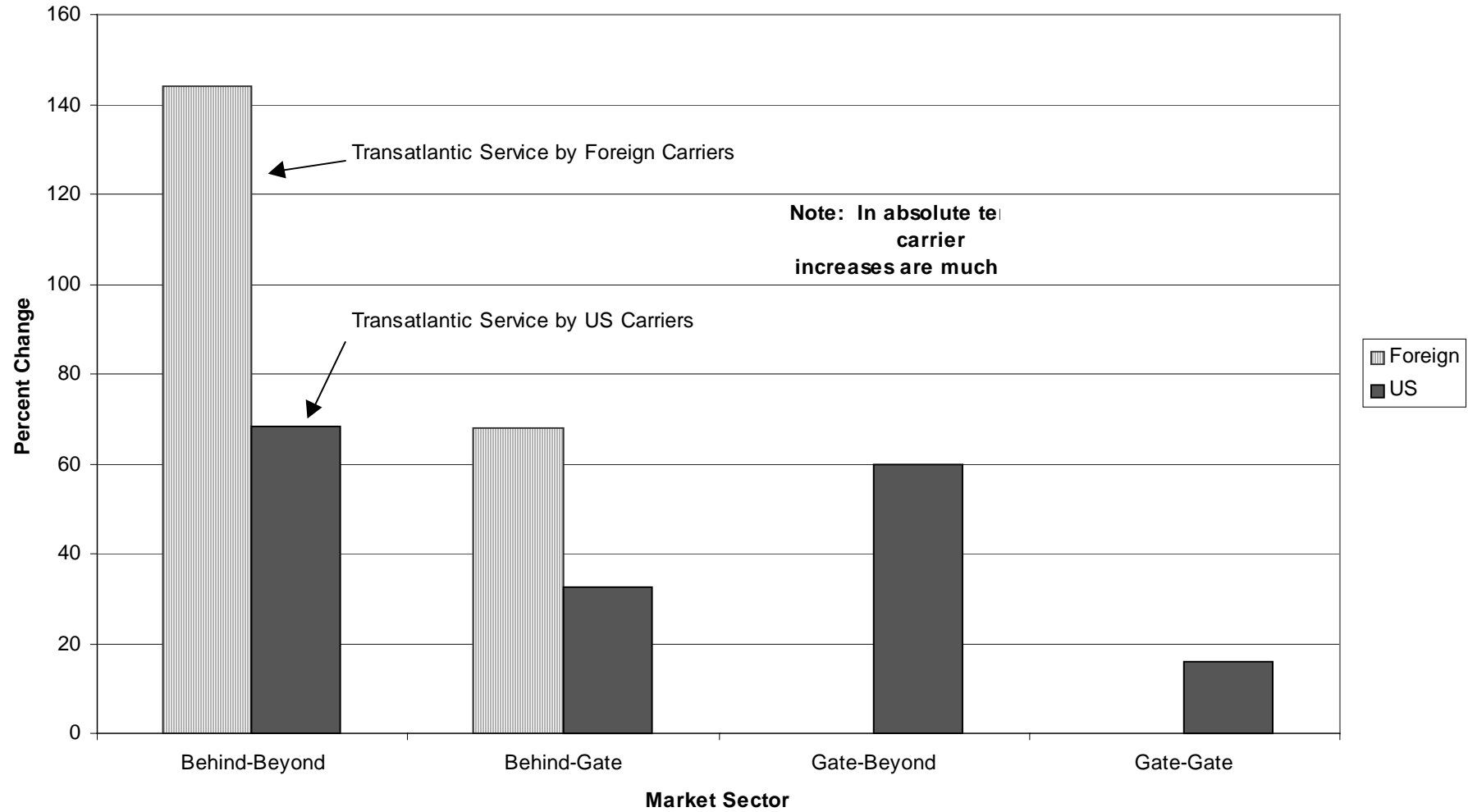
**US-Europe T-100 TRAFFIC (excl. LHR)
By European Gateway (Code-Share vs Other)
Year Ended Each Quarter 92/4-97-2**



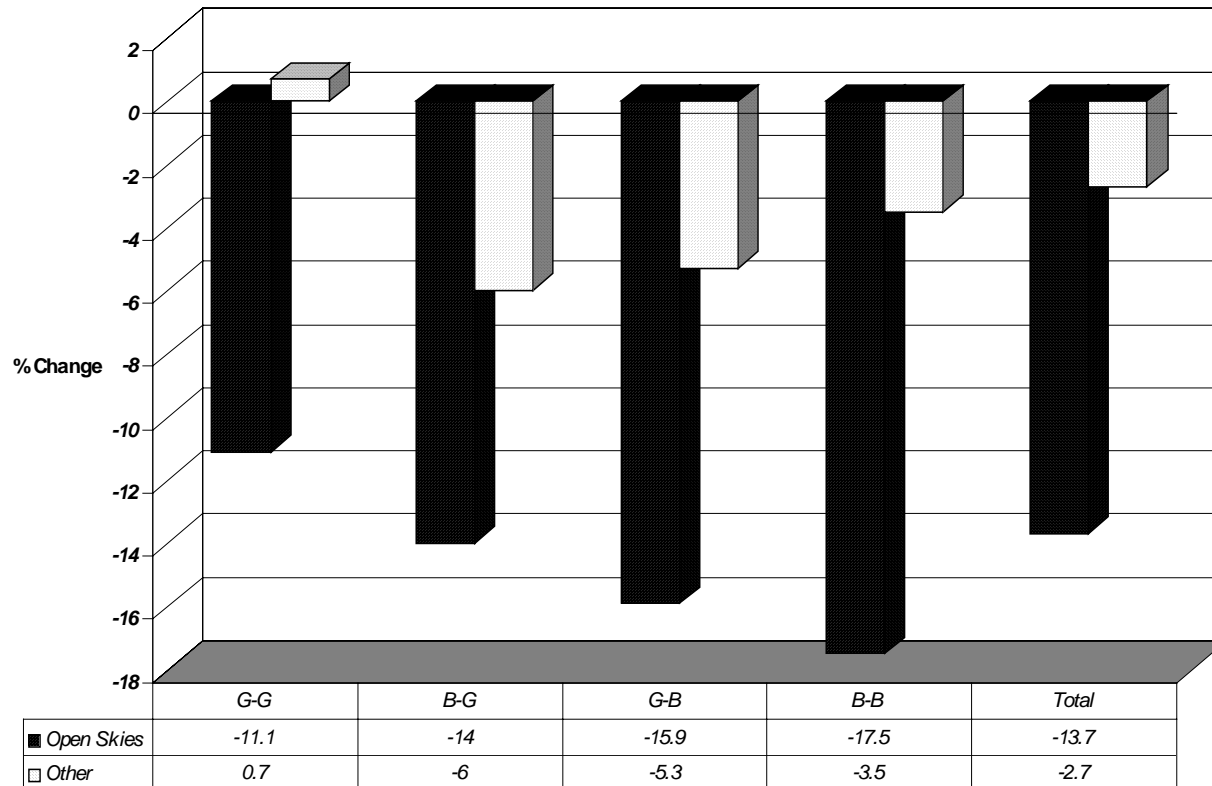
US-EUROPE O&D TRAFFIC
Percent Change between 1992 and 1997
US Carriers by Market Sector



US-EUROPE O&D TRAFFIC PERcent Change between 1992 and 1997 US and Foreign Carriers by Market Sector



**Transatlantic Markets
Changes in Average Fares
Cy 1998 vs CY 1996**



CONTRIBUTION FROM BIAC I.

*by Gerald L. Baliles**

There ought to be a more consistent way of dealing with alliance proposals. My own view is that, as long as safety is assured and consumers are provided with all necessary information, alliances should be cleared to proceed on a basically deregulated basis.

1. Immunised alliances

Immunising alliances against anti-trust concerns raises an entirely different set of issues. Such immunised arrangements go well beyond allowing airlines to sell seats on one another's flights, and they raise some unanswered questions:

What policy outcomes are sought with such grants of immunity? Should such grants be used to gain carrier support for new air service agreements between two countries? Is this a sufficient basis upon which to grant immunity from anti-trust laws?

Some in the industry have begun to ask: How do governments explain negotiating an "open skies" agreement, then in the next breath essentially close the market to new entry by granting immunity to the two nations' already dominant airlines? It's a good question. Obviously, the governments involved are trying to provide their own carriers with the means to compete against other alliances, thereby creating more competition in the world as a whole. OECD should closely examine whether this, in fact, has occurred. OECD should also provide the data and other analytical tools needed to determine whether the immunity for open sky trade-off has been good for consumers of air transportation.

2. Sovereignty-based nature of international aviation

The underlying issue, of course, is the need to examine citizenship/ownership issues and foreign investment rules. In many ways, airlines are not permitted to act like other normal businesses, due, in part, to the sovereignty-based nature of international air service agreements and Chicago Convention citizenship requirements. Airlines do invest across their borders, but are not normally allowed to exercise "control."

Such an approach has long out-lived its usefulness. A smart investor in a public corporation can exercise something approaching control with as little as five-ten percent of a company's stock. In addition, it makes little sense to worry about control of an airline by a foreign citizen/airline if that same foreign citizen/airline has been granted immunity from anti-trust laws in its dealings with a domestic airline.

* Former governor of Virginia, head of the International Practice Group at Hunton and Williams.

In sum there are three steps I believe should be taken with regard to airline alliances:

- de-regulation of standard, non-immunised, alliances code sharing, etc. This should be done subject only to governments' legitimate regulatory interest in safety and consumer protection;
- re-consideration of the use of anti-trust immunity. There needs to be a legitimate basis upon which to judge the effect on competition and on consumers' access to improved air transportation alternatives;
- re-consideration of sovereignty-based approaches to air service agreements and issues such as cross-border ownership and control. Airlines' access to, and business dealings in, other markets should be treated more like those of other businesses.

3. Infrastructure

There is an important infrastructure component to airline and aviation issues. The ability of air traffic control systems to efficiently keep traffic flowing, the availability of slots and gates and other such issues directly affect the competitive environment. Carriers may face entry barriers in certain markets or may have to curtail their offerings. Schedules are designed around the system's inefficiencies. In many cases, alliances represent a carrier's only way of gaining meaningful access to a particular airport.

Many studies have recommended the improvement of the international aviation system's capacity. Air traffic control reform, improved airport facilities and removal of archaic slot regimes are among the most frequently discussed issues. In many countries, including most OECD-member countries, affirmative action on these items would do far more to improve the competitive environment than various regulatory schemes controlling airline activities that have been floated by governments. OECD should do more to focus attention on these issues.

CONTRIBUTION FROM BIAC II.

**AN EARLY RETROSPECTIVE
ON A DECADE OF GLOBAL AIRLINE ALLIANCES:
THEIR IMPACTS ON CONSUMERS, COMMUNITIES,
CARRIERS, AND COMPETITION**

Submitted by United Airlines

The story of most of this first century of aviation has been a story of technology – of huge leaps in the capability of humans to bridge ever-vaster distances at previously unimaginable speed. It is the story of how the handmade biplane launched on a beach in North Carolina grew into the complex machines that every day hurtle millions around the globe with mundane regularity and reliability.

As we approach the end of this first century, the focus of international aviation is changing. It is becoming not just the story of moving people and goods rapidly around the world, but of developing and adapting new business structures and the international regulatory environment to make that happen more efficiently, freely and conveniently.

Two phenomena, over just this last decade, have proven pivotal. These are the rise and worldwide spread of aviation liberalisation, and the growth of airline networks as the optimal means of achieving efficiencies in a global marketplace. The first of these – the growing recognition that open aviation markets enhance economic development, consumer welfare, and competition – has in many ways given rise to the second phenomenon, as networks are proving to be the most effective tools for operating in these newly-opened markets.

Aviation liberalisation has been the focus of much serious policy consideration and economic discussion, but the more recent global alliance phenomenon has not. The debate about global alliances has too often been chiefly rhetorical. Opponents warn of the consequences of airlines growing “too big,” and proponents offer alliances as a stand-alone solution to nearly all shortcomings of international aviation. Such superficial treatments are unfortunate, since integrated global alliances appear to represent a lasting and fundamental change to the structure of the international aviation industry and international air travel. As Aviation Week recently declared, “global airline alliances... have laid the foundation for the world’s future air transportation system.”¹ As alliances increasingly are viewed as stable business entities, rather than short-term marketing phenomena, the response of aviation policymakers over the next several years will help determine whether alliances continue to grow in scope, importance, and effectiveness.

As the greater part of a decade has passed since the first integrated international alliances were formed, one can now begin to assess, or at least describe in detail, their impact on key areas of public interest and concern. With a focus on consumers, communities, carriers, and competition, one can identify global alliance benefits and beneficiaries and assess any concerns raised by policymakers or regulators in the US and abroad.

1. Background: the nature of global airline alliances

Global airline alliances represent the adaptation of efficiency-enhancing networks to international aviation. By gathering passengers from numerous points and sending them through dense and efficient “pipeline” routes for dispersal to numerous points “beyond,” aviation networks achieve economies of density. These economies are enhanced by the economies of scope or scale achieved by expanding the range of communities from which traffic is “gathered.” By consolidating passengers over a central hub, and dispersing passengers through connections to numerous spokes, hub-and-spoke carriers can serve many more destinations and passengers economically. Using the same resources needed to serve a more limited number of point-to-point routes, they can operate larger aircraft flying the pipeline routes with higher, more efficient load factors, at lower per-seat costs.

These efficiencies are amplified by integrating international hub-and-spoke systems between and among air carriers in a network. By linking hub systems, the networks also connect all of the spokes at either end of the system into unified air service systems. The realisation of these economies and network efficiencies led the airline industry to evolve from point-to-point flying in the 1960’s, to hubs in the 1980’s, to the development of global alliances today.

As an economic model, an integrated alliance offers a means for international air carriers to integrate their networks without an actual merger or the acquisition of common control. Because such ownership and control is almost universally prohibited by national laws, many traditional forms of economic integration available to other business entities are precluded. When immunised, alliance structures allow air carriers to co-operate in key efficiency-enhancing activities – like co-operative fare-setting and capacity planning – that would otherwise be prohibited. Even without immunity, allied carriers can engage in many significant forms of co-operation, including shared gates and facilities, ground handling and research and development. The benefits to consumers, communities, carriers, and competition have been substantial:

2. The impact of global alliances on consumers of air services

Global airline alliances have significantly affected consumers, travellers and shippers in at least three primary areas. First, they have greatly expanded the number of destinations that travellers can reach using the same air transportation system – “on-line” – without having to transfer or connect to unrelated airlines. Second, global alliances have made international travel more convenient – more “seamless,” in the popular jargon. Third, global alliances have meant considerably lower fares for the great majority of international passengers.

2.1 *Global alliances serve more “on-line” destinations*

The efficiency of global alliances depends, in part, on the scope of their networks. The more cities from which traffic can be consolidated for long-haul “pipeline” transportation, the greater the efficiency of the network. Like most distribution networks, these airline networks have an inherent economic incentive to expand service to, and “collect” traffic from, the widest possible range of communities and markets. This, in turn, increases the economies of density on the main “pipeline” routes and improves the utilisation of costly assets like sophisticated aircraft, highly trained crews, and complex marketing organisations, thereby lowering the average unit costs of production. Moreover, through operation of the hub-and-spoke system, each city “behind” the hub is connected – typically with a single hub connection – with every city “beyond” the hub. This proliferation of connecting destinations is further magnified exponentially when hubs are linked internationally through global alliances.

The US Department of Transportation (“DOT”) estimates that global alliances have resulted in new on-line service linking tens of thousands of city pairs. Even just one alliance – that involving Delta Airlines and its three European partners – was projected by US authorities to bring “on-line service to nearly 32 000 city-pair markets,” accounting for 21 million passengers.² These convenient “on-line” services stand in contrast to pre-alliance journeys, where travellers on most international routes were required to transfer or connect between different, unrelated airlines to reach their destinations, with considerable inconvenience and delay.

2.2 *Global alliances provide more “seamless” international travel*

In addition to generating thousands of new “on-line” city-to-city connections for travellers, alliances are having a growing impact on enhancing the convenience of international air travel. By co-ordinating among member carriers around the world, alliances allow travellers to be treated as though their entire journey is occurring on a single airline. This permits the passenger to purchase and use a single ticket, to earn and redeem frequent flyer credits and frequent flyer status on a common network, and to utilise “reciprocal” alliance member lounges or “club rooms” around the world.

Alliance co-operation also facilitates more co-ordinated baggage handling and ground services, and more convenient connecting gate locations. Of particular significance is the ability of alliance members to co-ordinate schedules and connections to significantly reduce the “elapsed time” of lengthy international journeys. According to the US General Accounting Office, “close schedule co-ordination between partners often produces shorter layover times between connections.”³ The alliance passenger can also look to any of the alliance member carriers for assistance rather than being “handed off” among the several unrelated airlines that carry the passenger for part of the journey.

These benefits of more “seamless” travel are of considerable real value to travellers. A Corporate Air Travel Survey conducted by IATA in 1997, for example, found that 75 percent of business travellers believe alliances are beneficial, emphasising better choice of connections, more convenient schedules, and more destinations.⁴ DOT also reported earlier this year that transatlantic traffic in connecting markets is growing “at 2.5 times the rate of growth in so called gateway-to-gateway markets,” showing that “consumers have responded favourably to the improved service being offered by the alliances.”⁵ A United Airlines study in August 1998 found similar consumer response to alliances among 500 frequent flyers surveyed. Overall, some 68 percent expressed a preference to fly on an airline in an alliance, with only seven percent expressing a contrary view.

2.3 *Global alliances offer lower fares than interlining carriers*

The US Department of Transportation recently concluded that “the improved service and competition offered by the alliances have lowered fares in many international aviation markets.”⁶ An independent empirical analysis performed by economists Brueckner and Whalen at the University of Illinois, entitled “The Price Effects of International Airline Alliances,” found that alliances have indeed had a dramatic downward impact on average fares. Specifically, the Brueckner econometric study, based on DOT airline fare data, found that international alliance carriers charge “fares that are 18-28 percent below those charged by non-allied carriers” on interline (connecting) routes.⁷ In a later study, Brueckner and Whalen found that the Northwest/KLM alliance alone saves passengers as much as \$185 million annually.⁸ The studies also show that secondary markets benefit, both from an increase in on-line service and from the discounts associated with on-line through fares.⁹ Therefore, markets “beyond” the traditional gateway cities enjoy the greatest fare reduction benefits.

US authorities are continuing to analyse fare data in transatlantic “city-pair” markets, and the effect of alliances. DOT previously analysed changes in average transatlantic fares between 1996, when alliance operations began in earnest, and 1997. That analysis found that average fares declined more than five percent in open skies markets where alliances operated, but only one percent in other US-Europe markets.¹⁰

3. The impact of global alliances on communities

Global airline alliances have had a beneficial effect on communities, both large “gateway” cities and a vast number of smaller, under served communities:

3.1 Global alliances generate new service to secondary markets, enhancing “connectivity”

By capturing network efficiencies, integrated global alliances can offer more service to more small or less-developed communities than non-network or point-to-point air carriers could economically provide on their own. These efficiencies allow carriers to reduce their unit costs by collecting traffic from numerous points, an option not available to point-to-point carriers that must rely on relatively few, higher-volume routes. With this unique ability to serve “thin” routes economically, integrated alliances have developed new services “in thousands of connecting markets,” including those which are “historically under served,” according to DOT.¹¹

The degree to which these under served communities can be better “connected” by alliances to world trade and business flows is seen, for example, in parts of Asia and Central Europe, and in other areas lacking comprehensive road and rail networks. In Central Europe, alliances have greatly expanded the scope of on-line international service to under served communities, helping to integrate Central and Eastern Europe with the rest of the Continent. From 1992 to 1996, DOT estimates that the Northwest/KLM alliance increased traffic more than 500 percent between secondary US cities and points beyond Amsterdam, including many cities in Central and Eastern Europe. Since the Star Alliance was formed in 1997, that same region has enjoyed a similar expansion of service to and from points in the US. With network code sharing, United provides new on-line access to eight Eastern European cities, with five daily flights to Warsaw and twice-daily service to Prague. Together, Star Alliance members now serve over 20 cities in Eastern Europe on nearly 50 routes to the US.

The development of global alliances has had a similar effect on secondary markets “behind” the international gateways in Asia. Over the last five years, with alliance networking, the number of Asian markets served by Star Alliance members rose from 75 to 82, with a 22 percent increase in weekly departures, in spite of a regional economic recession. Nearly half of this growth occurred in small and medium-sized markets.¹²

3.2 Global alliances support economic development in both primary and secondary markets

Global airline alliances play an important role in promoting economic development. In September 1999, for example, 21 Asian heads-of-state attending the Asia Pacific Economic Co-operation (“APEC”) forum, formally endorsed implementation of a series of recommended aviation liberalisation steps designed, in substantial part, to facilitate airline alliance operations throughout the region. The Asian officials placed “high priority” on steps to “facilitate co-operative arrangements” between airlines, and the leaders underscored that “air services have a large contribution to make to development and community

building in the region.”¹³ They also emphasised the importance of enhanced air services to the development of the tourism industry, a critical economic driver for many less-industrialised and less “connected” communities.

The alliances also facilitate economic development in major cities, not just secondary markets, by stimulating traffic on the high-volume business and leisure routes which form the backbone of the alliance networks. By linking network hubs internationally, the alliance stimulates development in the gateway and hub cities where their “pipelines” connect.¹⁴ Public policy experts at Virginia’s George Mason University recently examined the impact of airline networks and alliance hubs on hub communities and passengers with access to a major hub airport. Their study, entitled “The Benefits of Being A Hub Airport City,” found that “hub airports would seem to act as a magnet for high-technology development” and employment.¹⁵ The study concluded that hubs and their carriers “actively support the longer term development of the local economies.”¹⁶

4. The impact of global alliances on air carriers

With very few exceptions, airlines participating in international alliances have benefited from their alliance relationships. The alliances have produced considerable positive financial outcomes for carriers, both in enhanced revenues and in reduced costs. According to Air Canada President Robert Milton, the airline “has received a C\$400 million revenue boost from [participating in the] Star Alliance since the pact was formed in May 1997.”¹⁷ Similarly, Lufthansa reported that alliance-generated business added \$275 million to its 1998 revenues.¹⁸ A Merrill Lynch study released last year states that the “profit impact from alliances so far has already been substantial, and is growing.”¹⁹ Moreover, revenue growth from alliance operations is at a very high margin, as it is generated over the same asset base.²⁰

Alliances have meant significant traffic growth. For example, even before the full implementation of the Star alliance, in 1996 United Airlines reported generating 207 000 incremental bookings and \$100 million in incremental revenue through its alliance members, up some 30 percent over the previous year. United’s most recent figures reflect even stronger improvements of 366 000 incremental bookings and \$220 million in incremental revenue. DOT has found the greatest transatlantic traffic growth where integrated alliances operate in open markets. From 1992 to 1996, with the advent of the KLM-Northwest alliance, traffic increased nearly 400 percent from cities behind Amsterdam to cities beyond, in contrast with a 16 percent decline in such hub traffic at Paris, a restrictive hub, where no alliances were based, according to DOT data.²¹

This traffic-enhancing effect is not surprising, since alliances permit carriers to enter new markets – to put their products on many foreign “shelves” – through code-sharing and joint marketing with their partners in those markets. Carriers can thereby achieve market presence without the large capital and operating costs of internal expansion that would be required to initiate their own service. Specifically, the alliance structure enables participating carriers to market their services with other alliance members that enjoy strong brands and market presence in new or distant markets. In addition, the alliance structure facilitates common alliance “branding” on a global scale. This allows each member of the alliance to offer a more comprehensive – indeed, a global – travel product to attract premium business, business class passengers, corporate accounts and large agency business contracts, as well as international leisure passengers.

Reinforcing these commercial market access benefits is the ability of alliances to alleviate two sets of regulatory limits on market access. These are the near-universal prohibitions on “cabotage” – the right of a carrier to provide service entirely within a foreign country (*i.e.*, between points within the foreign country) – and on foreign ownership and control of domestic airlines.

Alliance participation does not eliminate cabotage restrictions. It does, however, allow an air carrier to market its services in combination with a foreign airline partner that provides the local (within-country) aspect of transportation. Alliances also address the second issue, which is the widespread limitation on foreign airline ownership and control, often expressed in terms of allowable levels of voting stock or other indicia of “actual” control of the foreign carrier. (The US allows 25 percent foreign voting control of a domestic carrier, while many other countries permit up to 49 percent foreign ownership). Integrated alliances afford carriers many of the efficiencies of inter-carrier integration that otherwise could be obtained only through outright ownership or merger. Indeed, some observers believe that airlines that have entered into comprehensive alliances enjoy as much as 70 percent-80 percent of the benefits that would be achieved through an outright merger.²² Thus, within alliances that have received antitrust clearance from the relevant authorities, carriers may co-ordinate and adjust fares, routing, scheduling, and all-manner of business activities, as though they were a single airline entity.

The alliance structure makes available to members the bulk of integration efficiencies typically achieved in other industries only through merger or acquisition in which one entity effectively ceases to exist. Thus, the alliances afford efficiencies of sheer size and scope, while at the same time allowing the airline members to retain their individual identities and distinctive cultures and characteristics. This is significant from the standpoint of national and political interests, given many nations’ strong and long-standing desire not to have their “flag” carriers “swallowed up” by a homogenised foreign “mega-firm.” But this emerging type of alliance “confederation” structure also permits each alliance member to benefit, through code sharing, from other members’ individual and distinct carrier marketing strengths and identity in its own primary markets.

Finally, on the cost-reduction side of the equation, alliances are exploiting additional efficiencies beyond inexpensive market access through code sharing. These include pooling purchasing power, developing joint ground handling and maintenance facilities, and undertaking other aviation-related joint ventures. These are producing “sizeable cost savings,” according to the Merrill Lynch report.²³ Alliances appear to be pursuing additional efficiencies through joint efforts to better utilise productive resources, including maximising aircraft utilisation, jointly developing software, sharing airport terminal facilities and lounges, eliminating duplicative check-ins for multi-segment “through” flights, consolidating reservations facilities, establishing joint city ticket offices, and consolidating other business offices.²⁴ Another important potential area of co-operation is joint purchasing of aircraft, aviation fuel and components.

In light of the ability of integrated alliances to enhance traffic and avoid costs, carriers have rapidly coalesced in integrated global networks over just the last few years. Yet the trend appears to be more than a short-term marketing fad. According to a Boston Consulting Group study completed in January, alliances have become increasingly stable, reflecting a long-term restructuring of the international aviation industry. The study reported that 68 percent of international alliances in place in 1995 remained in existence at the time of the study, compared with a 38 percent survival rate between 1992 and 1995. The study also found that alliances with the highest degree of economic integration had the greatest likelihood of remaining intact over the long term.²⁵

5. The impact of global alliances on international aviation competition

Despite the apparent benefits of global alliances, there remains some degree of controversy regarding the effect of these global networks on particular aspects of aviation competition. These concerns have not been widespread, nor do they focus on the overall competitive effect on a global scale. But they have generated some regulatory attention with respect to concentration on hub-to-hub routes and within bilaterally restricted markets.

5.1 *The overall competitive impact of alliances*

The US Department of Transportation's detailed studies of the transatlantic aviation market "confirm that the existing airline alliances are competing and that this competition is producing substantial public benefits," according to DOT's top aviation official earlier this year.²⁶ Even more recently, a senior US transportation official reconfirmed that "we have found [international alliances'] effects to be overwhelmingly pro-consumer and pro-competitive."²⁷ Established US aviation policy envisions strong "global networks" competing in an open aviation market.²⁸

The US Justice Department also has affirmed in formal comments that global airline alliances can "promote the public interest by creating consumer and pro-competitive benefits that airlines cannot provide on their own."²⁹ The top US antitrust official has written that "passengers have benefited significantly from international alliances."³⁰ The Justice Department also has observed that, unlike traditional horizontal combinations that join competitors in one entity, the fully integrated global networks represent combinations that create service and efficiency synergies and rationalise individual air carrier routes and networks. As the Justice Department stated in comments filed last year with DOT, "by linking largely end-to-end route networks, international code-share agreements can inject additional competition . . ."³¹

European studies also have supported the development of airline alliances and have urged regulatory forbearance. A comprehensive report of the Organisation for Economic Co-operation and Development (OECD), for example, emphasised the importance of avoiding government regulation that could impede global airline industry restructuring.³² The OECD repeatedly cited the need to avoid inconsistent or conflicting regulation that could "compromis[e] the efficiency of the restructuring process" of the aviation industry, in light of "the emergence of an international airline industry characterised by cross-border co-operation, joint ventures, and alliances."³³ A major report for the Association of European Airlines also recently recognised the development of international airline alliances as "one of the most important developments in the international airline industry in recent years."³⁴ Virtually all of the countries that have entered into bilateral open market agreements with the US have endorsed the alliance concept, with their airlines actively engaged in these alliances.

Asian governments and carriers also have shown growing support for global alliances, recognising their competition and service benefits. Over the last two years, nearly all-major Asian carriers have entered (or announced an intention to enter) alliances with each of the existing integrated transatlantic alliances. Indeed, as part of a multi-year regional effort to achieve "more competitive air services," the 21 Asia-Pacific economies represented in APEC recently declared support for specific measures to facilitate co-operative arrangements among airlines.

This view among international policymakers of the overall pro-competitive impact of integrated alliances rests on a recognition of the global nature of the market and a resulting focus on competition between and among the global networks. Unlike route-by-route, airline-by-airline rivalry, network competition is viewed as extending across thousands of point-to-point markets, offering numerous new competitive services to consumers. As an example, a traveller from a US interior point to an interior European point can make the journey over several alternative "online" alliances, with multiple competing routings over different and competing US and European hubs.

This widely accepted theory of inter-network competition appears to bear out in practice, as network-to-network competition has, in fact, proven to benefit travellers significantly. According to DOT, two or more alliances now compete in some 2 500 city-pair markets. Three or more alliances each serve 3 000-6 000 city-pairs.³⁵ This competition overlap helped drive prices down significantly in 1997,

according to officials, and average fares in US-Europe open markets declined by more than five percent between 1996 and 1997.³⁶ Additional DOT data on the pro-competitive effect of network-to-network competition on transatlantic alliances is anticipated.

5.2 *Specific competition issues*

Notwithstanding assessments of the overall positive impact of alliances on global competition, some have expressed concern about their competitive effect in three specific contexts. The first involves the potential diminution of competition for a relatively small segment of passengers – time-sensitive, gateway-to-gateway travellers – when competitors on major routes join together in an alliance. A second expressed concern is that the development of strong international alliances may disadvantage carriers that do not participate in alliances. A third concern involves fully integrated alliances operating in markets that are not subject to competitive, price-disciplining new entry.

The impact of overlapping hub-to-hub services affects a relatively small portion of passengers because the great majority of passengers do not travel simply between hubs. On a typical United Airlines flight from the airline's hub in Chicago to its alliance partner Lufthansa's hub in Frankfurt, for example, only about 13 percent of the passengers originate in Chicago and terminate their trip in Frankfurt, or vice versa. For the great majority coming from and going elsewhere, there are competing connecting services offered by several global networks. For instance, even though Delta and its alliance partner operate all non-stop flights from the US to Austria, fully half of the travellers to Vienna still fly on competing airlines' connecting service via other European cities.³⁷

There remains an even smaller "subset" of these hub-to-hub passengers who are "time-sensitive" and insist on direct non-stop service. Even for this group, however, competitive pressure in open entry markets from connecting service and from flights at alternative airports appears to discipline any non-stop service fare "premium" attributable to network market concentration.³⁸ Moreover, these time sensitive passengers on hub-to-hub non-stop routes are also benefiting from the greater schedule choice and seat availability resulting from increased frequencies and aircraft up-gage prompted by the proliferation of traffic flowing to and from markets beyond the pipeline.

As to the other identified areas of competition concerns, some, including the Transportation Research Board, have questioned whether alliances will exclude unaffiliated (non-alliance) carriers from international markets and thereby weaken their ability to compete. These concerns appear largely theoretical, as non-allied carriers have continued to prosper in both Europe (under internal market deregulation) and in the US in an alliance environment. These include Southwest, recent entrants such as Ryanair and Virgin Express, and other low-fare, point-to-point carriers that have grown in the domestic markets at the same time as global alliances have developed. Moreover, at present all but a few of the major US carriers are participating in global alliances.

Finally, regulators in the US and Europe have expressed concern about the competitive effect of alliances in closed-entry markets – *i.e.*, where restrictive bilateral or practical operational limits imposed by slots and gate space constrain potential new market entry. These concerns recently prompted US authorities to refuse to permit an integrated alliance relationship between American Airlines and British Airways.³⁹ Notably, the US-UK market lacks both an open entry aviation agreement and the slots and facilities at key airports necessary for carriers to enter the market. The US has made it clear that integrated alliances can be pro-competitive for consumers only where the market at issue is open to new entry, so as to be able to offset any market power associated with concentration.

6. The impact of global alliances on other public policy issues

Beyond their direct effects on consumers and carriers, global alliances also have significant secondary effects on key public policy issues. Two of the most prominent are the promotion of trade and open aviation markets, and improvements in airline safety.

6.1 *Global alliances tend to promote aviation liberalisation*

Global airline alliances and the liberalisation of international aviation markets are mutually supporting. The introduction of liberal bilateral aviation agreements leads to the development of more competitive markets. Airline alliances have arisen as a means to best exploit these open market opportunities. With their need for transborder operational flexibility, these multinational entities, in turn, create commercial pressure for more open markets and the removal of other barriers to entry. Indeed, alliance participation creates incentives of the member carriers to advocate and promote open markets within their own governments, as a matter of economic self-interest. A recent Transportation Research Board report on airline competition recognised that “highly integrated airlines may prompt countries to harmonise their bilateral treaties to facilitate adoption of a multilateral framework.”⁴⁰ Moreover, liberalised aviation agreements, whether involving the US, Europe or others, have tended to emerge only when national carriers have urged their governments to negotiate liberal aviation agreements so that they could fully participate in integrated global alliances. As a regulatory matter, moreover, competition authorities have insisted that markets be open to new entry in order to permit the concentration that alliances otherwise could bring in restricted markets.

In any event, US aviation policy implicitly recognises the relationship between alliances and open markets. The Department of Transportation’s International Aviation Policy Statement expresses the need for open markets to promote the development of global networks.

6.2 *Global alliances can promote enhanced international aviation safety*

Global alliances also have renewed focus on ensuring the same high level of safety for passengers as they move from one alliance partner to another on multi-segment journeys. Regulatory strictures require that passengers be made aware, at the outset of their trip, of which airline they will be flying on each leg of their journey, and air carriers are increasingly sensitive to this issue and improving their methods of advising travellers.

Moreover, given common branding and joint marketing, all alliance partners have a strong incentive to ensure the quality of each other member’s product, including the quality of customer service, flight operations, and safety. Indeed, one alliance recently “suspended” the participation of an Asian carrier that had experienced numerous accidents in a brief time period. Alliance partners are requiring higher-quality performance from each other, a process that tends to lead to better quality and improved safety.

This safety-enhancing effect has been demonstrated in the US domestic regional feeder system, where regional airlines now carry 15 percent of the US domestic enplanements, or approximately 70 million passengers annually. Nearly all of this travel is undertaken in conjunction with major airlines – “alliance” partners – that own or affiliate with nearly all regional carriers. As these smaller companies have evolved from independent operators to partners with major airlines over the past 21 years since US deregulation, they have seen their safety statistics improve dramatically, as their partners have insisted on

quality performance to protect their own service and safety reputations. Indeed, between 1983 and 1996, accidents per 100 000 regional airline departures dropped almost in half, from 0.63 to 0.35.⁴¹

International airline partnerships appear to be making similar demands on member carriers. In addition, the US and other governments are enlisting global alliances as a means to require existing and potential partners of their national carriers to undergo safety inspections as a precondition to conducting joint operations. The US Departments of Transportation and Defense are actively participating in this effort.

7. Conclusion

Global alliances have developed with remarkable speed over the last half decade, in response to the increasing liberalisation of aviation markets around the world, the growing demand for convenience and reliable service, and the drive for efficiencies in international commercial activity. During just this brief period, these networks already have had a profound effect not only on the airline industry, but also on its key beneficiaries – consumers and communities. The growing importance and future effectiveness of global airline alliances will depend to a large degree on the willingness of aviation policymakers and potential regulators around the world to acknowledge and facilitate the positive effects of airline alliances in a fully global aviation marketplace.

NOTES

1. The Rush to Global Alliances, Aviation Week & Space Technology (Aug. 23, 1999), p. 52. .
2. The Department of Transportation found that the alliance would “significantly increase competition and services opportunities” for millions of passengers. Order to Show Cause 96-5-26, DOT Docket No. OST-95-618 (May 21, 1996), p. 19.
3. United States General Accounting Office, Report to Congressional Requesters, *International Aviation – Airline Alliances Produce Benefits, but Effect on Competition is Uncertain* (April 1995).
4. International Air Transport Association, Corporate Air Travel Survey (1997), p. 31.
5. Remarks of Charles A. Hunnicut, Assistant Secretary for Aviation and International Affairs, US Department of Transportation, World Travel and Tourism Annual Conference, Berlin, Germany (March 8, 1999), p. 4.
6. Id.
7. Jan K. Brueckner & W. Tom Whalen, *The Price Effects of International Airline Alliances*, University of Illinois at Urbana-Champaign (Dec. 1998), p. 30.
8. Jan K. Brueckner & W. Tom Whalen, *Passenger Welfare Gains From the Northwest/KLM Alliance*, University of Illinois at Urbana-Champaign (April 1999); *New Study Finds Northwest/KLM Alliance Saves Travellers Millions*, PR Newswire (May 5, 1999).
9. When carriers act co-operatively on fares, as they do in alliances with antitrust immunity, the jointly-determined “through” fares – those charged to passengers making on-line connections – are lower than the cumulative individual fares that non-allied carriers charge on each individual segment of the “through” journey.
10. *Murphy Touts Open Skies, International Competition at ACI Forum*, Aviation Daily (Dec. 10, 1998), p. 427.
11. Remarks of Patrick V. Murphy, Deputy Assistant Secretary for Aviation and International Affairs, US Department of Transportation, before the Transportation Research Board (Oct. 30, 1998).
12. OAG scheduled departures, June 1994, June 1999.
13. Declaration of the Economic Leaders of the Asia Pacific Economic Co-operation forum (Sept. 13, 1999), p. 5.
14. The economic development value of this international traffic is substantial. According to a 1998 study prepared by Booz-Allen-Hamilton, each additional international passenger at O’Hare Airport, for example, generates over \$2 300 in economic benefits for the region. This would theoretically amount to nearly a million dollar economic impact for each B-747 international arrival. Booz-Allen-Hamilton, *Chicago Aviation Policy* (Nov. 12, 1998), p. II-7.
15. Kenneth Button & Roger Stough, *The Benefits of Being a Hub Airport City*, George Mason University (Nov. 1998), p. ii.
16. Id.

17. *Air Canada Posts Record Profits on Improved Toronto Hub, Rising Yields*, Aviation Daily (Aug. 5, 1999), p. 3.
18. *The Rush to Global Alliances*, Aviation Week & Space Technology (Aug. 23, 1999), p. 52.
19. Merrill Lynch, *Global Airline Alliances* (Sept. 25, 1998), at p. 2 (“SAS, for example, indicated that it expects as much as a \$200 million bottom line impact from the Star Alliance when it is fully implemented. United has already seen over \$200 million of incremental revenue from Star, and we think the KLM/NW joint venture will earn pretax income well in excess of the \$200 million which would imply a margin greater than ten percent (1998 joint venture sales expected to be \$2.2 billion). On an earnings per share basis, the contributions could be sizable as well. ..”).
20. Id.
21. *Maintaining Momentum Toward Global Open Skies*, remarks of Deputy Assistant Secretary Mark L. Gerchick before the Airports Council International (Dec. 4, 1997), p. 8.
22. Merrill Lynch, supra, p. 2.
23. Id. p. 19.
24. *The Rush to Global Alliances*, Aviation Week & Space Technology (Aug. 23, 1999), p. 52.
25. Boston Consulting Group, *1998 Study of Alliances Trends* (Jan. 1999), reported in The Financial Times (Jan. 25, 1999).
26. Remarks of Charles A. Hunnicut, Assistant Secretary for Aviation and International Affairs, US Department of Transportation, World Travel and Tourism Annual Conference, Berlin, Germany (March 8, 1999), p. 4.
27. Remarks of Patrick V. Murphy, Deputy Assistant Secretary for Aviation and International Affairs, before the Federal Aviation Administration’s 24th Annual Commercial Aviation Forecast Conference, Washington, D.C. (March 24, 1999), p. 10.
28. Statement of United States International Air Transportation Policy, 60 Fed. Reg. 21841 (May 3, 1995).
29. Comments of the United States Department of Justice on the Order to Show Cause, DOT Docket No. OST-96-1700 (Jan. 28, 1998), p. 4.
30. Acting Assistant Attorney General Joel Klein, letter to the Wall Street Journal (Feb. 6, 1997).
31. Comments of the United States Department of Justice on the Order to Show Cause, DOT Docket No. OST-96-1700 (Jan. 28, 1998), p. 8.
32. Organisation for Economic Co-operation and Development, *The Future of International Air Transport Policy: Responding to Global Change*, 1997.
33. Id., p. 113.
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38. Association of European Airlines, *Airline Alliances and Competition in Transatlantic Airline Markets* (Aug. 1998), p. 3.
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CONTRIBUTION FROM BIAC III.

TESTIMONY OF JAMES E. BENNETT* BEFORE THE EUROPEAN COMMISSION, DIRECTORATE GENERAL FOR COMPETITION

Mr. Chairman, members of the Directorate staffs, and representatives of the Member States Advisory committee, my name is James E. Bennett and I am the Executive Vice President and Chief Operating Officer of the Metropolitan Washington Airports Authority. I would like to express my appreciation to you for the opportunity to appear before the Commission and express our views on the very important matter that you are considering.

The Metropolitan Washington Airports Authority operates two airports in the Washington region: Washington Dulles International Airport, our international gateway, and Ronald Reagan Washington National Airport for domestic service within the United States. The Authority is an independent agency that is governed by a Board of Directors composed of ten regional representatives appointed by the elected Governors of Virginia, Maryland, and the Mayor of the District of Columbia. Three additional representatives are appointed by the President of the United States to represent the National interest.

Our Corporate Purpose statement charges the Authority with the responsibility to “plan, provide and actively manage world-class access to the global aviation system in a way that anticipates and serves the needs of the National Capital area.”

We identify the air transportation needs of the over nine million people in our region not only by drawing upon the publicly appointed representatives on our board, but from the contributions of our community advisory boards, and our active participation with business, community and local government organisations in Virginia, Maryland and the District of Columbia.

In light of our regional structure and responsibilities, we respectfully suggest that we have a much better and broader understanding of the total air service needs of our community than perhaps some of these “consumer” groups from which you may have heard.

So that there can be no doubt, the Authority is vitally concerned about preserving and enhancing competition and air service at our airports. While we are supportive of expanding our hub carrier’s alliance networks, we let no stone go unturned in our quest to improve competition in our international air service. In the last twelve months, Authority staff has made 44 formal presentations to 32 international airlines in 24 countries providing in-depth market and airport information to seek new and added passenger service to Washington Dulles. In almost all of these cases, the Authority has travelled to meet in-person, with each airline in their home country. In addition, presentations have been made to eight US domestic passenger carriers, and 41 meetings have been held with international and domestic cargo carriers. In 1998, the Authority will have spent just under \$3 million in pursuing new and competitive air service.

* Executive Vice President and Chief Operating Officer, Metropolitan Washington Airports Authority.

And perhaps unlike other alliance hubs, no barriers to entry exist at Washington Dulles. We are neither slot-constrained nor capacity constrained. New entrants can and do freely enter and exit. To the extent that any alliance network provider may seek to exploit its market power through higher prices, a new entrant could easily enter our market.

Our commitment to assure viable competition does not end when an airline announces new service. The Authority takes an active role in assisting new carriers to educate the public and promote new service. In 1998, we will have spent over \$1 million in co-operative advertising and other promotional activities with carriers beginning new air service at Washington Dulles. In addition, in the last year, the Authority has contributed both financially and with staff participation to eight major international travel and cargo sales missions and trade shows in nine countries to promote new and existing carrier's service to Washington.

We currently have 18 airlines providing international air service from Washington Dulles, and nine of these airlines provide trans-Atlantic service. We have at least two competitors in three of the seven European markets served by the Star Alliance. (Exhibit 1) In the remaining four markets, significant inter-gateway competition exists through competitive alliances. In addition, we continue to promote new entrants in all of these markets.

Without question, the Washington region has benefited greatly from the Star Alliance. In the last year, the Alliance's value to our region has increased with the addition of a second, late-evening bank of flights at Washington Dulles by United Airlines. This new bank of flights has added trans-Atlantic service and additional domestic services to feed the trans-Atlantic flights from 11 US cities. (Exhibit 2) These new flights also benefit our local Washington customers by giving them additional travel options unavailable to them before.

We also recognise that competitive services assure the best mix of air service and prices for our region's passengers and shippers. We have learned from our own analyses of our airport's passenger traffic that the needs of our local community require us to seek air service beyond that which is provided by the Star Alliance.

In reviewing the Commission's proposed recommendations, we are most concerned that the Commission's analysis focuses unduly on gateway-to-gateway traffic. Our analyses, based on US Department of Transportation data, separate the traffic between the gateways into four categories:

- Gateway-to-Gateway;
- Gateway to Beyond Gateway;
- Behind Gateway to Gateway; and
- Behind Gateway to Beyond Gateway.

We have found that only 25 percent of United's seats are filled with origin and destination passengers travelling between Washington and Frankfurt. More than 46 percent of those seats are filled with passengers from United's network behind the Washington gateway. In total, 51 percent of United's passengers on its service from Washington actually travel to Frankfurt. At the same time, over 48 percent of the passengers on these flights are actually travelling beyond Frankfurt. In short, almost as many of United's passengers travel beyond Frankfurt as travel to Frankfurt. (Exhibit 3).

Similar to United, data that we have for Lufthansa shows that only 26 percent of their Washington-Frankfurt seats are occupied by passengers travelling to and from Frankfurt. 73 percent of Lufthansa's Washington-Frankfurt passengers are either coming from behind Washington markets or travelling beyond Frankfurt. (Exhibit 3).

In short, Frankfurt and Washington are merely two points on the way to the ultimate destination for almost half the passengers on the plane. Viewed another way, taken together, almost 70 percent of United's and Lufthansa's Washington - Frankfurt passengers are travelling outside the city-pair. This analysis suggests that the Commission's primary focus on city-pair competition does not represent an adequate portrayal of what is actually happening in the overall markets. We respectfully suggest that the Commission's analyses must take into account the broader network alliance competition that exists from where the passengers begin and ultimately end their journeys, not just between two points along the route.

We believe there is significant inter-gateway competition to these ultimate destinations. From Washington, someone bound for Vienna, Copenhagen, Warsaw or almost any other European, African or Middle Eastern destination could take British Airways or Virgin Atlantic via London, Air France via Paris, KLM/Northwest via Amsterdam, or Austrian Airlines via Zurich, as well as United or Lufthansa via Frankfurt.

As for the passengers originating behind Washington Dulles travelling to either Frankfurt or beyond, their choices are almost without limit. A passenger from New Orleans who could travel on United through Washington Dulles, for example, could also use the same type of service on: Delta through Atlanta or New York; American through either Dallas-Ft. Worth or Chicago; Continental through Newark; or Northwest through Detroit to mention only a few possibilities.

Even if one focus solely on origin and destination traffic between Washington-Frankfurt, similar to what the Commission has done, at least 25 percent of these passengers travel over other US and foreign gateways. (Exhibit 4) In short, even with United's and Lufthansa's non-stop service from Washington Dulles, a quarter of the total origin and destination traffic travel on other airlines over other gateways competing with the Star Alliance.

The Commission's analysis of competition appears to focus only on whether there are more than 120 000 passengers travelling between a city-pair and if an alliance has 12 frequencies a week in that city-pair. This criterion appears to be without any clear foundation or empirical basis; nor does it sufficiently address what is actually occurring in the international marketplace.

The criterion only seems to measure whether there is competition from point A to point B. In reality, the majority of passengers begin their journey before point A and travel beyond point B, and these passengers have many different choices available to them on how to get to their final destination. Choice is what is the real issue for the consumer and the fundamental basis for competition. Competition should only be measured on a criterion that is clearly related to whether choices exist for the majority of consumers to reach their destinations. In this regard, we respectfully submit that the Commission's competitive analysis and criterion appear to be inadequate.

The Authority appreciates and shares the Commission's concerns about air service competition in this new age of alliances. We clearly want what is best for our local residents, and our passengers from elsewhere in the United States and around the world.

Where we appear to differ with the Commission, is that we believe a broader view of passengers' whole range of choices in travelling to and from their destinations is more meaningful than relying only on an analysis of city-pairs. With respect, we simply do not agree that the Commission's proposed conditions,

based as they are on what we consider to be an inadequate analysis, will have any positive effect on improving consumer choice or in increasing competition. Competition clearly already exists in the much broader context of where the majority of passengers' are actually beginning and concluding their trips and how they choose to travel.

We are concerned that the Commission's proposed conditions could actually put Washington Dulles at a competitive disadvantage given all the alternative routings that already exist in the market, and the new routings that could be created if restrictions on United and Lufthansa are enacted. Disruption in existing Washington-Frankfurt service could impact our local economy by as much as \$318 million a year - our conservative estimate of the economic impact of daily non-stop service in this market. (Exhibit 5) The recommended conditions have far more potential to be disruptive to consumers who have established business relationships for passenger and cargo service than to promote competition. Passengers and cargo shippers with contractual or other relationships with United and Lufthansa will be forced over other less convenient United and Lufthansa gateways, and that this diversion could become permanent. It is also most uncertain that a new entrant could begin to provide the same level of behind and beyond gateway traffic that is the fundamental basis for the success of the flights between the Washington and Frankfurt gateways. Finally, as an airport operator, we are deeply concerned about the Commission's proposed conditions that would reallocate valuable airport space and impose additional burdens on airport services for a new entrant, which may not survive after being given special operating conditions for six months.

In conclusion, as we stated before, the Authority shares the Commission's commitment to competition. Our philosophy of competition is that competition increases by increasing services, and we spend a substantial amount of dollars and staff hours to put our philosophy into practice.

We must respectfully disagree with the Commission's apparent philosophy that to encourage competition one must reduce a competitor's service - if even for only a short time. We ask that the Commission undertake a more detailed analysis of what is actually occurring in the broader market for trans-Atlantic air service, one, which does not rely solely on an analysis of passenger traffic between a city-pair. We believe such an analysis will enable the Commission to gain a better understanding of all the choices that now exist for travel between the United States and Europe so that the Commission may take steps, if it considers necessary, that will result in real benefits instead of potential for great harm to consumers on both sides of the Atlantic.

We, therefore, respectfully urge the Commission to reconsider its proposed conditions relating to frequency reductions as a way of achieving its competition objectives.

I wish to once again thank the Commission for giving the Authority the opportunity to share its concerns on this most important topic, and will be pleased to entertain your questions.

INTERNATIONAL CHAMBER OF COMMERCE (ICC)
CONVERGENCE OF COMPETITION LAW AND POLICY
IN THE FIELD OF AIR TRANSPORT
WITH SPECIAL REFERENCE TO THE EU-US CONTEXT

Prepared by the ICC's Commission on Air Transport

1. Summary of recommendations

The ICC:

- supports a freer exchange of air services throughout the world, under competitive conditions which are transparent for all users of the air transport system;
- notes the growing number of cross-border, especially transatlantic alliances among airlines;
- notes also the potential for the unilateral application of competition policy, which causes lack of coherence between air transport regimes and uncertainty for users and airlines;
- considers it necessary to seek convergence between air transport competition policies and a coherent and a more transparent regulatory aviation framework, both at the procedural and at the substantive levels, in order to facilitate freer exchange of international air transport services;
- believes these principles of convergence should apply, in the first instance, to the EU/US market, since both entities have well-developed competition rules applying to air transport;
- supports the eventual adoption of these principles by other regions as soon as reasonably practicable.

With regard to procedural questions, the ICC believes there should be:

- a regular exchange of non-confidential information between competent competition authorities concerning the enforcement of their respective air transport competition regimes;
- application of the "positive comity" principle by these same authorities in order to avoid unilateral actions;
- hand-in -hand with the EU/US negotiations, a grant of competence to the European Commission air transport negotiators by the European Council of ministers to vest Commission negotiators with the power to negotiate on aviation competition issues having an impact on the single European market. The granting of this power should be subject to consultation with the competent national authorities, the industry and consumers' groups, and

should be based on the Commission's developing a clear framework of principles and policies.

With regard to substantive questions, the ICC supports:

- the creation of clearly defined and transparent rules regarding transatlantic airline behaviour, whether unilateral or concerted, based on an analysis of the present standards of the two jurisdictions;
- a greater convergence of competition laws and policies as they affect air transport, beginning with an EU/US agreement, which would then be open to participation by countries in other regions;
- the development of an effective dispute settlement system to ensure the speedy resolution of conflicts between parties.

2. Which airline practices affect competition?

The present statement focuses on airline behaviour, which affects competition. Government behaviour may also affect airline competition, but such behaviour is connected with the broader subject of trade policy and regulation. Consequently, state aid, the granting of anti-trust immunity, airline taxation, and foreign ownership and control limitations are not examined in this paper. But the ICC notes that it has already expressed its strong disapproval of state aid in its 1995 paper "State Aid to Airlines", which concluded that «state assistance to airlines, whether direct or indirect, should be deemed to distort the market and to be detrimental to airlines and users». Likewise, in 1994, the ICC argued for the reduction of limitations on foreign ownership of airlines, stating that "air transport development should be determined by economic and technical considerations and not by questions of national pride and national ownership". In its 1997 paper, "Taxes on international aviation: a 1997 update", the ICC called for "the elimination of all airline ticket taxes not strictly related to air transport needs". Moreover, a future ICC paper, now under discussion, will include a more comprehensive look at the economic effects of liberalised air transport competition, and will consider many issues not included in the present paper.

For the present purpose, the following distinction is made with regard to airline behaviour:

- i.* co-operative agreements;
- ii.* unilateral conduct involving the abuse of a dominant position.

Co-operative agreements, designed to achieve fleet rationalisation and network efficiencies, are widespread among airlines and are used as an instrument of cost reduction and risk spreading. Co-operation between airlines can include the following practices:

- consultation on and co-ordination of tariffs;
- joint operations, including pooling of services and capacity;
- interline agreements;
- route planning;

- fleet rationalisation, including code sharing;
- blocked space agreements and other mechanisms;
- co-ordination of schedules;
- joined frequent flyer programs;
- franchising;
- computerised reservation systems.

A number of these co-ordinated and concerted activities have been exempted under the EU competition regime. In the US, the Department of Transportation (DoT) has determined, in particular cases, that otherwise-prohibited activities of airlines which would reduce competition on air services to and from the US are nonetheless in the public interest and have sufficient transport benefits so that they can be excluded from the application of anti-trust laws. Among these are - under certain conditions - tariff co-ordination and interlining under the auspices of IATA.

Conduct involving abuse of dominant position is clearly objectionable and must be addressed by competition authorities. Obviously, many airlines especially flag carriers, inherited dominant positions from the former regulatory and policy regime. Dominance may lead to monopolisation by the dominant carrier and predatory behaviour. Predatory behaviour may occur in scheduling, pricing, capacity (dumping), and CRSs.

3. EU-US co-operation in enforcement

The 1991 EU-US agreement regarding the application of their respective competition laws set forth the principle of positive comity, under which each side must notify and give weight to competition policies of the other in instances where their own enterprises are involved. With regard to information and consultation, as of early 1997 some 65 notifications, of which about 45 concerned mergers, had been sent by the European Commission to the US competition authorities, and some 115 notifications, of which 70 concerned mergers have been sent to Europe by US authorities.

The Microsoft case (1994) was a prominent example of transatlantic co-operation on procedural matters. In this case, the Commission and the US Department of Justice (DoJ) co-operated and jointly held discussions with Microsoft in order to reach a settlement under which Microsoft committed itself to comply with both EU and US competition rules.

4. Competition authorities (enforcement)

4.1 US jurisdiction

For air transport, though the governmental authority on the US side in the context of the application of the above EU-US agreement is the DoJ, on matters involving international aviation, the DoT has the power to grant immunity from the application of the anti-trust laws. Under certain conditions, anti-trust immunity has been granted by the DoT in several transatlantic alliances above, namely, KLM and Northwest (1993), United Airlines and Lufthansa (1996), SAS (1996) and Swissair/Sabena/Austrian and

Delta (1996).

4.2 *EU jurisdiction*

It is undisputed that the European Commission is responsible for the enforcement of competition rules, including the so-called Merger Regulation of 1989, with respect to agreements and concerted practices liable to affect intra-Community trade. Even though these rules have not often been applied to air transport, several decisions based on them, including those affecting Lufthansa-SAS and British Midland-Aer Lingus, have been taken by the Commission.

National authorities of the EU member states may also rule on the admissibility of concerted practices and agreements among airlines. Up to the present, enforcement at the national level has been quite limited, with the exception of actions taken by the UK and German competition authorities. The UK government, as reported above, laid down its own conditions for its approval of the BA/AA alliance.

4.3 *European Commission: external competence*

The question of the European Commission's external competence on airline competition questions has not yet been resolved. The Commission claims competence under Article 89 of the Treaty of Rome, but this is not universally accepted by national competition authorities.

All of the alliances mentioned above, including those which were established before 1996, will be re-examined by the Commission. The Merger Regulation (1989) designed to control concentrations, including those involving non-EU airlines but having a "Community dimension", can already be applied and has been applied in the Delta/PanAm agreement (1991).

4.4 *The creation of a "Common Aviation Area"*

On 24 June 1996, the EU Council authorised the Commission to open negotiations with the US on behalf of the EU regarding certain aspects of an EU-US aviation agreement. The authorisation, however, was less than a grant of full competence for the Commission to reach decisions, which could lead to full liberalisation of the transatlantic market.

The long-term purpose of the EU is the creation of a "Common Aviation Area", defined as an "area where air carriers could freely provide their services in the EU and US on the basis of commercial principles ensuring for airlines the possibility to compete on a fair and equal basis and equivalent regulatory conditions". It is also stated that equivalent competitive conditions for carriers from both sides must be established.

5. *The restructuring of the airline industry*

At a time when access to foreign markets is being liberalised for international air transportation, as exemplified by "open skies" agreements, and when the airline industry is in the process of being privatised, airlines need to meet increasing competition at the global level, which, in turn, leads to pressure on tariffs. A privatised airline industry, in order to stay profitable, is compelled to seek cost reductions and to optimise market share.

Especially in the growing leisure market, no-frills and charter competition will intensify for operators of scheduled services as non-scheduled carriers offer low fares as a result of high load factors and low costs. A proliferation of start-up scheduled carriers also puts pressure on costs and fares.

In these circumstances, airlines have entered into cross-border joint ventures and other co-operative agreements in order to rationalise their operations, increase their market coverage, and strengthen their competitive position in the marketplace. But as they do so, they face different competition regulations and policies from individual states. A proposed code-sharing alliance or an equity alliance may be subject to a series of different regulations by national authorities and international competition regimes.

In the EU/US case, for example, the European Commission's competition authority may be at odds with competition authorities in individual EU states, which may, in turn, be in conflict with the competition policies of US authorities. A case in point is the marketing/code sharing alliance between American Airlines and British Airways, in which the European Commission has taken a position on competition policy which differs markedly from that of the United Kingdom and which is likely to be at odds with policies concerning the same alliance by the US authorities. The result is confusion, delay and uncertainty for airlines and users.

6. International inter-airline alliances in the 1990s

The trend towards more comprehensive airline co-operation was set in 1993 by the alliance between KLM and Northwest Airlines. The alliance was judged by the US and Dutch governments who allowed the airlines in question to exclude competition among them. The US DoT, which must investigate anti-competitive effects of agreements between airlines that affect international air transport, granted anti-trust immunity to the alliance. The European Commission did not take any action at that time.

In 1996, co-operative agreements have been concluded between Lufthansa and United Airlines (UA), SAS and UA, Swissair/Sabena/Austrian Airlines and Delta Airlines, and, at the time of writing, an alliance between BA and AA is pending. Competition authorities on both sides of the Atlantic have assessed or are assessing these later alliances to determine whether they should obtain anti-trust immunity.

7. Comparison of recent decisions on transborder air transport competition

7.1 *The EU-US dimension*

In the EU-US context, two separate regimes, namely, EU law and policy on the one hand and US law and policy on the other, govern the behaviour of alliances, which have an "EU-US dimension". Airline behaviour can be characterised as having an EU-US dimension when it affects air transport in all of the following markets: the EU domestic market, the US domestic market and the transatlantic market connecting the two domestic markets.

So far, a limited number of decisions on competition cases with an EU-US dimension have been taken. With the exception of the Delta-PanAm case, all of these decisions were taken by the US authorities.

Consequently, it is difficult to make a comparative analysis of the positions taken by the EU and the US, since there is insufficient case law to support such a comparison. An attempt can be made, however, to outline the criteria which have played a role in decisions with an EU-US dimension, taken by US authorities on the one hand, and decisions with an EU dimension only, taken by EU authorities.

With respect to the first, "international comity" and "foreign policy considerations" play a crucial role. As noted earlier, the US DoT cannot approve a transborder alliance that substantially reduces or eliminates competition unless the alliance achieves important "public benefits".

It is true, nonetheless, that US decisions with an EU-US dimension are related to larger markets than those rendered so far by their European counterparts, with the exception of the Delta-Pan Am case. A more valid comparison may be made between the policies of the competition authorities on the both sides of the Atlantic.

7.2 *Issues in judging competition cases*

EU and US competition authorities have considered some of the following questions in judging the acceptability of transborder alliances:

- the relevant market;
- access to routes, including capacity and slots;
- tariff co-ordination;
- CRS participation;
- exemptions and periods of exemption.

7.3 *Similarities and differences with respect to the judgements*

Though the criteria for judging transborder alliances in the EU and the US have been similar, the bases for the decisions vary according to their geographical and jurisdictional context: US-EU, or the EU internal market. The "missing" element has been a common basis for judging alliances in the EU-US context.

That being said, both the European Commission and the US DOT, in judging alliances, conduct a detailed analysis of economic concepts such as the "relevant market", with both jurisdictions tending to carry out a sophisticated analysis of the data in this respect. It should be noted, however, that the decisions rendered by the Commission, in nearly all instances, have concentrated on the particularities of the EU internal market, and do not have to take into account matters impacting on foreign relations. In other words, the scope of the US competition decisions has been wider than that of their EU counterparts.

8. Design of a transparent framework

The ICC believes that the trend to alliances and other forms of co-operation among airlines can be of benefit to the industry and the travelling public in that it can offer seamless services, a range of new destinations, and greater convenience to the user. At the same time, it is imperative that these co-operative agreements be subject to fair and objective competition rules, in order that the proponents of alliances will benefit from a stable and predictable legal environment, and so that the rights of other airlines and those of users will be adequately protected.

Bearing these points in mind, the ICC believes that there should be a greater convergence in aviation competition policy and regulation among the different authorities, national and international, having jurisdiction over air transport. Such convergence should begin with the transatlantic market, and, as practicable, be extended to other areas.

The term "convergence" applies to questions of authorising new services, as well as to the enforcement of competition laws. Specifically, airlines should know with reasonable certainty:

- which are the competent authorities;
- what are the rules that apply to different cross-border competitive practices?

If no attempt is made to find a more common approach to competition law and policy, the prospects for uncertainty and frustration will increase.

The history of transatlantic airline competition demonstrates the point. The DoT's Show Cause Order directed at IATA activities (1978) led to objections from many of the world's airlines and governments over what was seen to be an unwarranted extension of the extraterritorial reach of US anti-trust laws. The Laker case (1985) caused a conflict between the US and UK governments over the US claim to have jurisdiction over what the UK government considered to be a strictly British dispute. Both of these unilateral actions led to conflict at the highest levels of government. In a liberalised environment, with its increased competition and uncertainty, these disputes are likely to intensify.

9. Conclusions and recommendations

The ICC is in favour of a freer exchange of air services throughout the world. Such an environment requires the liberalisation of the international regulatory framework, which can stimulate and enable cross-border, inter-carrier Cupertino, subject to rules of fair competition.

As air transport markets become increasingly global, the ICC's broader objective is to arrive at a seamless travel system in which national laws and regulations on air transport achieve a greater convergence, so that the essentially national character of the present air transport system is gradually replaced by a system of multinational rules and regulations which will achieve more coherence and predictability for carriers and a wider choice of services at reasonable prices for users.

As an important first step towards these objectives, the ICC believes that competition laws and policies of various states need to achieve greater convergence. We urge that the process begins with an EU/US agreement, and that it be open to participation by governments in other regions as well, with a first emphasis on developing common principles regarding airline behaviour that affects competition.

The discussions between the European Commission and the US on transatlantic competition issues would be an appropriate occasion to reach an agreement on convergence between the two sides concerning air transport competition law and policy.

To achieve such an agreement, the ICC recommends that the European Commission air transport negotiators be given a clear and unambiguous grant of external competence to negotiate this and other competition issues with the US authorities, subject to consultation with competent national authorities, the industry and consumers' groups, and based on a clearly understood framework of principles and policies.

Such an EU/US agreement could usefully include:

- the creation of clearly defined and transparent rules regarding airline competitive behaviour, based on an analysis of the present standards of the two jurisdictions and building on earlier agreements which provided for positive comity;
- a streamlining of the procedures concerning the standards to be applied to competitive behaviour involving cross-border, "inter-area" and "intra-area" alliances;
- the creation of an adequate dispute settlement mechanism in order to ensure a smooth and speedy solution of differences between the parties.

In the longer term, the ICC supports the creation of a "Common Aviation Area" between the EU and the US, which should be open to other governments from regions to join when they believe it is appropriate to do so. Such a "Common" area would incrementally replace hundreds of bilateral agreements, most of which restrict market access and deny choice to consumers.

The ICC commends the principles set forth in this paper to the EU/US negotiators, as well as to national transportation authorities in other regions.

AIDE-MEMOIRE OF THE DISCUSSION

The **Chairman** began by noting the high degree of interest by the business community in the roundtable, reflected in the large Business and Industry Advisory Committee (BIAC) delegation. He invited BIAC representatives to make a short opening statement and mentioned his intention to return to the BIAC delegation for some further comments at the end of the roundtable.

A **BIAC** delegate commenced by stating that airline mergers and alliances have the potential to generate significant benefits for consumers. According to various surveys and analyses, consumers have enjoyed not only lower prices, but also increased service on dense routes and expanded access to small and medium sized communities. Moreover, economies of density have been achieved through international alliance networks offering seamless global travel and linking smaller secondary markets with global transportation networks. In addition, higher frequency and increased capacity within alliances indicate that prices for non-stop travel will actually decline. For example, without the open skies agreement, the United States and the United Kingdom interlined fares in 1998 were on average 36 percent higher than comparable co-operative fares being offered by immunised US/European alliances.

With respect to the regulation of airline alliances, the delegate advocated non-discrimination and national treatment in connection with the anti-trust review of airline alliances, and recommended refraining from employing industrial policy type measures. Certain proposals in the Secretariat's background paper ("Secretariat's note") raised concerns, he believed, about these principles. For example, it states that frequent flyer programs ("FFPs") may be anti-competitive and that competition in the airline industry could be enhanced through a phasing out of these programs. BIAC thinks this implies the application of non-competition principles and probably should be withdrawn from the note. Regulatory authorities, the delegate believed, should focus on the development of common standards in reviewing alliances and also advocated greater transparency in the process. Finally, he recommended that when an alliance is granted anti-trust immunity, any mandated subsequent reviews of that immunity should be undertaken consistent with its terms and analysed within the traditional rule of reason framework. Summing up, the delegate felt that national treatment, non-discriminatory treatment, convergence and competition principles should underlie anti-trust enforcement in connection with airline alliances.

Another **BIAC** delegate, employed by the Metropolitan Washington Airports Authority ("Metropolitan Authority") offered further comments on the Secretariat note. He believed it contains an undue focus on city-pair or gateway to gateway traffic. The Metropolitan Authority had performed extensive analyses, using US Department of Transportation data and other sources, on the effects of alliances on the Washington airports. The Metropolitan Authority found that an analysis of gateway to gateway traffic is inadequate. Instead, air traffic between gateways should be separated into four categories: gateway to gateway; gateway to beyond gateway; behind gateway to gateway; and behind gateway to beyond gateway. The Metropolitan Authority consistently found that on average only 25 percent of the seats of its main alliance (*i.e.* Star Alliance) carrier, United Airlines, were filled with origin and destination passengers travelling between Washington and Frankfurt, the Star Alliance's main European hub. On an aircraft with 300 seats, these means only 75 passengers are actually travelling from Washington to Frankfurt. The other 75 percent are either travelling from cities behind Washington (e.g., Denver, Chicago, Atlanta) or going beyond Frankfurt (e.g., Vienna, Warsaw, Africa, etc.).

The BIAC delegate further remarked that the Secretariat note is principally concerned with time-sensitive business travellers. He stated that on Washington to Frankfurt flights only about 30 percent of seats are allocated to business class. That means only 22 of the 75 Washington-Frankfurt passengers, or just eight percent of the total, can be considered time-sensitive passengers travelling between the city pair. He suggested that focusing the analysis on what amounts to only eight percent of the total passengers travelling between two points is an unreasonable basis on which to assess airline competition. The remaining 92 percent of passengers all have competitive alternatives from which to travel from their actual originating point, which in most cases is not Washington, and their ultimate destinations, which in most cases is not Frankfurt.

The BIAC delegate noted that even focusing solely on origin and destination traffic between Washington-Frankfurt, at least 25 percent of passengers do not fly with the Star Alliance into or out of Washington Dulles, despite its non-stop service on that route. The Metropolitan Authority believes that alliances provide many more flight opportunities for Washington residents than if reliance were placed solely on local market traffic in the Washington area.

The delegate was also concerned about competition and regulation remedies referred to in the Secretariat note. These, he felt, could actually put Washington Dulles airport at a competitive disadvantage, at least for a short time, given all the alternative routings that exist in the market and the new routings that could be created if restrictions on either United, Lufthansa or other alliances are enacted. The Metropolitan Authority believes that competition increases by increasing services. The delegate disagreed with suggestions that to improve competition one must reduce a competitor's service even if for only a short time. The Metropolitan Authority believes that a more detailed analysis is required of all existing competing choices for air travel between the United States and Europe so that any steps taken will result in real benefits instead of potential for great harm to consumers on both sides of the Atlantic.

The next **BIAC** speaker, from the International Air Transport Association (IATA) explained that IATA represents 270 international airlines around the world carrying more than 98 percent of all international passengers. He hoped that the roundtable would lead to a better understanding of the global nature of aviation and the need for competition analysis of alliances that is sensitive to increased harmonisation in aviation and recognises the realities at both ends of routes served. With reference to the Secretariat note, the delegate thought it made too little reference to interlining - a 55 years old process that grew up as an accident of history, a point that may also be true of alliances. Interlining is, he felt, pro-competitive, but its very ubiquity means there is some danger it will be undervalued and under-protected.

The **Chairman** noted that time constraints made it difficult to call on delegations which made written contributions to explain all the points of interest in their contributions. Rather, he intended to ask them to respond to certain questions or provide more information on various issues. He also intended to make occasional reference to a written contribution without calling for a presentation.

The Chairman contrasted the domestic and international situations as regards new entry into air transport. At the domestic level in many countries, there are relatively few constraints on the establishment of new domestic airlines. In contrast, entry on international routes is generally governed by bilateral aviation agreements having the effect of restricting the routes that can be flown, the number of carriers serving such routes, frequencies on each route, and sometimes capacities and fares offered. This is a subject of concern for the development of competition in what is very often a global field. He then drew attention to a very recently submitted Room Document supplied by the International Chamber of Commerce, entitled "Convergence of Competition Law and Policy in the Field of Air Transport - With Special Reference to the EU-US Context" [included in this Proceedings document]. He commended this interesting document to the delegates' attention and cited two passages from it:

...the ICC believes that there should be a greater convergence in aviation competition policy and regulation among the different authorities, national and international, having jurisdiction over air transport. Such convergence should begin with the transatlantic market, and, as practicable, be extended to other areas (see page 257 of this publication).

The Chairman noted that one of the purposes of the current roundtable was to promote such convergence. In the note's conclusions the Chairman found that the ICC supported what a BIAC representative had stated, *i.e.* the ICC:

...is in favour of a freer exchange of air services throughout the world. Such an environment requires the liberalisation of the international regulatory framework, which can stimulate and enable cross-border, inter-carrier co-operation, subject to rules of fair competition (see page 257 of this publication).

The Chairman stated that the Australian contribution found that current ownership and control provisions of [bilateral] Air Service Agreements are major impediments to the development of competition in air transport and expressed strong interest in further liberalisation measures. He called on Australia to expand on these subjects.

An **Australian** delegate noted that in 1944 in the Chicago Convention a fateful decision was made concerning airlines. Instead of operating like any other industry, airlines would be regulated in a manner that would protect national airlines, and ward off competition from overseas companies etc. Fifty-five years later, the judgement appears to have been mistaken. The system is slowly disintegrating. The delegate was struck by how different airlines are from other sectors involving international trade. The general assumption in trade is that people can trade freely unless there is some restriction. In airlines, the system is the opposite. Everything is restricted unless exempted. Comparing the international aviation policy agenda with the trade policy agenda, one finds bilateral agreements rather than multilateral, and industry specific arrangements rather than multi-product negotiations for liberalisation. The rules are outside the WTO, hence not governed by basic WTO principles of non-discrimination, most favoured nation treatment etc. The whole system is underpinned by numerous restrictions on competition and on ways of doing business. The bilateral system restricts airlines' ownership and access to capital, where they fly, the number and frequency of flights, the number of seats offered, types of aircraft employed and fares charged. The system restricts competition, raises costs and prices, and reduces product variety. Liberalisation, where it has occurred, has already led to greater competition, reduced fares, new routes and destinations, and improved quality of services. There remains considerable scope for further improvement.

The Australian delegate mentioned that the bilateral system has been built on the premise that each country will have a substantially nationally owned and controlled flag carrier. The result is an international misallocation of resources as some countries waste precious capital and other resources on inefficient airlines that would not survive absent government support. More efficient industries suffer both from having to compete for resources and having to use expensive international air transport.

The global aviation industry has reached a critical point in its development. The inefficiencies imposed on the system by the bilateral arrangements, and the benefits of more efficient, internationally competitive air services are now apparent. Reciprocal open skies agreements are spreading. Strong growth is revealing the system's inefficiencies and there is clear evidence of the benefits of deregulation. It is also clear that the system is leading to relatively inefficient ways of doing business. The industry structure would be very different were it not for the regulatory system. For example, instead of the burgeoning international alliances there would be a greater incidence of more efficient mergers and integration of airlines in different countries. In Australia, in connection with the Qantas/BA joint services agreement, the Australian Competition and Consumer Commission ("ACCC") was at first shocked that

competitors were seeking authorisation for an agreement on prices, capacity, frequency of flights, seats, etc. After investigating more deeply, the ACCC realised that such agreements were resorted to because regulation blocked the more efficient merger option. The ACCC believes that the current wave of alliances is motivated by a realisation that in five to fifteen years, the whole Chicago system will have been swept away. Airlines are racing to prepare for that as well as to deal with the needs of their global customers. Although such developments are to be welcomed, one must not ignore the possibility that some of the arrangements could be intended to put a cap on competition.

The **Chairman** next turned to the European Commission whose contribution stated that in the last ten years the European air transport industry has undergone a process of transition from tight regulation based on bilateral agreements and duopolies with virtually no competition towards a single market. While the EC states that liberalisation has brought clear benefits to consumers, it also expresses the view that the liberalisation process may not in itself be sufficient to deliver better services at lower costs. The Chairman invited the EC to comment on the achievements and the limitations of the liberalisation of air transport within the European Union (EU). He also requested the EC to comment on why a group exemption has been granted in the context of the EEA agreement to permit price collaboration for interlining.

A **European Commission** (EC) delegate noted that the organisation of air transport within the EU has been affected by three successive packages of regulation in 1988, 1990 and 1993. The purpose of this gradual liberalisation was to avoid chaotic effects and to give airlines time to adapt to the new environment. The effect of the liberalisation has been to extend the single market to air transport within the EU. In principle all EU carriers can now offer services on any route within the EU.

The liberalisation process has had the positive effect of giving EU consumers greater choice in airlines. There has also been a strong growth in the supply of air transport, and increased use of promotional tariffs. At the same time however, there have been developments preventing consumers from fully benefiting from the reforms. The first is that some national carriers have experienced financial and social difficulties and are still not through the necessary process of adaptation to a more competitive environment. There has been considerable recourse to restructuring programs supported by state aid. In addition, while promotional tariffs have become more widespread, the prices of fully flexible business and first class fares have increased. Moreover, new entry on certain routes is very difficult due to problems of congestion at peak times in a number of European airports, and this of course limits competition among airlines. Incumbent carriers are at a considerable advantage at congested airports due to the widespread use of grandfather rights as regards takeoff and landing slots. Furthermore, the costs associated with airport services have been crucially important as cost cutting intensifies. It is therefore important that these services too are brought into the competitive arena and that no companies are discriminated against.

Deregulation in the EU has triggered a wave of co-operative arrangements extending from code sharing to very integrated forms of co-operation between airlines. Although these should yield certain benefits, there is also the danger that they will reduce competition. Attention by competition authorities is also warranted because the so-called flag carriers may still have very strong positions on the market, and they could be tempted to engage in abusive behaviour such as predation, excessive pricing or exclusionary behaviour. In short, the EC believes that liberalisation must be accompanied with effective enforcement of competition rules.

The EC delegate confirmed that in the context of IATA interlining, consultation regarding passenger tariffs on scheduled services are exempted from the prohibition against restrictive agreements. The justification is that tariff consultations may contribute to the generalised acceptance of interlineable fares to the benefit of both air carriers and air transport users. Such consultation, however, must not extend beyond facilitating interlining. It should be limited to fares giving rise to actual interlining, participation in

such consultation must be optional, and it must not lead to agreements with respect to fares or related conditions. In addition, air carriers participating in consultations are obliged to interline with all carriers concerned. In May 1999, the group exemption was prolonged to June 30, 2001. Whether or not this will be further extended will depend in part on an investigation into its effects. That investigation began in 1998. The delegate noted that tariff consultations for cargo were removed from the scope of the block exemption in 1996. An essential point in the EC's investigation is the question of whether the IATA multilateral interlining agreement is still a useful instrument in view of the growth of networks and airline alliances, or alternatively, whether multilateral interlining could be reached without tariff consultations.

Before proceeding to look at the slot allocation and FFP issues, the Chairman believed it was necessary to examine market definition, especially given BIAC's initial intervention. Most of the written contributions offered extensive discussions of this question including consideration of whether markets should be defined airport to airport, city to city, or region to region. He noted that there is also the issue of whether markets should be defined by class of customer (*i.e.* are there separate markets for time sensitive customers and leisure customers). A third dimension is that of knowing whether direct flights or indirect, *i.e.* connecting flights can be good substitutes. Finally, he mentioned a fourth dimension, *i.e.* do tour operators and individuals constitute separate markets.

The **Chairman** noted that the United Kingdom contribution discusses at length two market definition issues. First, the criteria to consider in deciding whether non-stop and indirect flights between two points can be treated as belonging to the same relevant market, an issue also addressed by Australia. Second, it addresses the question of whether city to city flights arriving at (or departing from) different airports of the same city (such as Gatwick and Heathrow) should be considered to belong to the same market. On the second point, examined in the context of the examination of the British Airways/City Flyer Express merger, the UK contribution states that:

...from the perspective of the practical application of competition law, it is usually most appropriate to define the relevant market to include all city airports. One important advantage of this is that it ensures that budget airlines, which rarely operate out of major airports can be included in the competition analysis.

The Chairman quoted this because the roundtable would later see a divergence of opinion on the point. He called on the UK to discuss its approach to market definition in the case mentioned plus the American Airlines/British Airways ("AA/BA") case.

A **United Kingdom** delegate began by referring to the substitutability of non-stop and indirect or non-stop flights. He believed it was widely accepted that this issue really concerns only business or time sensitive passengers, *i.e.* substitutability is more or less assumed for non-time sensitive travellers. Further, as regards time sensitive, *i.e.* business, passengers it is necessary, he said, to be more exact about this category. Such passengers have a high opportunity cost for their time. Moreover, for them substitutability across direct and indirect flights depends not just on the length of a flight. Business passengers are very concerned to arrive just before and depart just after a meeting. A very conveniently timed flight will be valued more highly than simply a flight, which is short. So arrival and departure times plus frequency of service are important.

The delegate believed that where there is a very high frequency of non-stop flights, such service is likely to be a much higher quality product. But where flight frequency is lower, an indirect flight could be a good substitute. In any case, he reminded delegates that simply proving something is of higher quality is not enough to find it is in a separate market. What instead must be determined is consumer willingness to switch between products in response to price changes. He noted that it is actually quite difficult for competition enforcers to gauge such willingness to substitute, especially in long haul markets. Many

bilateral agreements prevent indirect flights undercutting the price of non-stop service. In that situation it is very hard for a non-stop flight to compete, *i.e.* it cannot charge a lower price to compensate for lower quality. This also makes it difficult for competition authorities to predict how consumers will react once the bilateral restrictions are lifted.

With regard to multi-airport cities and determining whether they belong to the same market, the delegate noted that once again the answer turns on consumer substitutability. In the UK, Heathrow is generally seen to be a higher quality product than Gatwick. Business passengers are prepared to pay more to use Heathrow. But again, a strong preference by some flyers for one airport is not enough to show that the two airports are in separate markets. One must consider whether consumers would be prepared to switch in response to price changes. One of the main difficulties here is to distinguish preferences for airports versus other factors. For example, on the London-Houston route, BA has one flight per day from Heathrow and Continental has two from Gatwick. If a customer is choosing Continental's Gatwick service, it is not clear whether this illustrates a preference for Gatwick over Heathrow, or for Continental over BA, or for higher over lower frequency of service.

The delegate noted that it is very dangerous to exclude possible substitutes from a definition. On the London-Houston route for example, if the market were defined as Heathrow-Houston, BA would have a 100 percent market share. This would amount to ignoring competition from a close rival flying virtually the same route with higher frequency. The other practical problem in adopting a very narrow market definition is that some airlines, in particular budget airlines, do not use either Heathrow or Gatwick. If one adopts an airport to airport definition, the effect is to exclude competition from budget airlines altogether, which of course is dangerous.

The **Chairman** appreciated the reminder concerning the difficulty of making appropriate market definitions and that the effect of narrow definitions may be to exclude some of the possible competition that could take place. He emphasised this because in the US contribution, in connection with market definition in the AA/BA case, it is stated that: "...the DOJ has determined that London Heathrow Airport is a separate market because an analysis of fares in city-pair markets with service to both Heathrow and Gatwick showed that most of the high fare (*i.e.* time sensitive business) passengers chose Heathrow service." Noting the discrepancy with the UK, the Chairman called on the Antitrust Division of the United States Department of Justice ("DOJ") to explore avenues for convergence in the market definition domain.

A **United States** delegate began by agreeing with much of the methodology described by the United Kingdom delegate. Market definition is always a very fact based question and reasonable agencies can reach different conclusions from the same facts. When the DOJ looked at the AA/BA alliance, it started with the difference between leisure and time sensitive business passengers. The question was whether a monopolist in non-stop service could profitably impose a price increase directed at an identifiable group of passengers who would not switch because the alternative connecting flight was not a valid substitute for them. The evidence in this case was based on passenger data for US to London service, econometric studies, analysis of corporate travel policies, and significant price differentials between the two types of flights. The price differentials are becoming even more pronounced because of growing direct negotiation of fares with corporate purchasers producing still finer price discrimination. All the evidence led the DOJ to conclude that time sensitive passengers are in separate markets.

Turning to geographic market definition, for time sensitive passengers, the evidence overwhelmingly showed a preference for Heathrow over Gatwick service. The passengers simply would not switch to avoid a price increase. This was true even for some connecting passengers who were just going through London. The reason for this is mostly geography. The DOJ found that a trip to downtown London was 14 miles from Heathrow versus 25 miles from Gatwick. The average time to drive this route was 32 minutes versus 64 minutes. Many businesses have opened offices in the Heathrow area to take

advantage of the airport making it still more attractive to passengers. Heathrow's attractiveness has also led to higher yields to that airport. All this was confirmed by documents from the two airlines involved in the alliance.

As to reasons for the difference between the DOJ's conclusion and that contained in the United Kingdom's written submission, the delegate opined that there could be a difference between UK passengers and US. The US analysis was based exclusively on US-UK city pairs. This meant the DOJ was looking at a sample containing a higher proportion of US passengers than was true for the UK's analysis. Passengers originating in the London area going to continental Europe or going to other destinations may have different airport preferences than US passengers. In any event, the DOJ found the market definition in this case to be rather clear cut. The evidence supported it and the US Department of Transportation (DOT) concurred in the narrower definition the DOJ opted for.

Another US delegate, this time from the DOT intervened to make a factual correction which does not necessarily affect the UK market definition analysis. Houston is limited to Gatwick service in the US-UK market by the terms of a bilateral agreement. Neither British Airways nor American Airlines serve Heathrow, they both serve Gatwick.

Before leaving the market definition discussion, the Chairman commended to delegates' attention, the EC's extensive discussion of this topic. He then turned to competition analysis of air transport markets and some of the practices attracting critical attention from competition authorities. The EC has offered the view that access to airport slots and airport capacity could be a major barrier to the development of new competition. He also noted that the UK contribution explained why the slot allocation mechanism provides incumbent airlines, and in particular hub operators, with important first-mover advantages that may impact on competition. The Chairman then invited the UK delegation to expand on those views.

A **United Kingdom** delegate stated that the advantages stem not so much from airport congestion as from how slots are actually allocated and in particular the influence of grandfather rights. The flag carrier tends to have been in the market longer, and to have acquired a larger share of the airport's slots. This is not just a question of how many slots the hub operator has but also how many peak slots it enjoys. For example, British Airways and its subsidiaries and franchisees at Gatwick have a total of 48 percent of the slots, a relatively modest share by international standards. At peak times in the morning and evening, however, that rises to 62 percent. Such a high share makes it really difficult for new entrants to compete with the hub operator. Another not entirely obvious point is that having a large proportion of slots allows the hub operator a greater ability to re-time its slots in an anti-competitive manner. This point was picked up as well in the Australian [and Italian] contribution[s]. The hub operator can sandwich new entrants by re-timing flights, thus holding them to a small market share. Finally, if the hub operator has a large portfolio of slots it is much more able to acquire further slots. This is because it is better placed to use slots at off peak times. If, for example, such an operator is running six frequencies into a city, it can more profitably supplement those with slots at less travelled times of day. A new entrant on the other hand, primarily needs peak time slots. Being better able to use the off-peak slots, incumbents are better placed to pick them up and later swap them for better times.

The **Chairman** noted that the Italian contribution discusses a case where it was alleged that Alitalia abused its dominant position through the discriminatory use of its power to allocate takeoff and landing slots. He asked the Italian delegation to give some background information on Italian slot allocation and to discuss the 1996 Alitalia case.

An **Italian** delegate briefly described Italian slot allocation, past and present. He then explained how Alitalia allegedly had abused its dominant position through discriminatory use of its power to allocate

takeoff and landing slots. Basically it reacted to competitors' moves by re-setting its own schedule so as to draw business away from them. This had the effect of forcing smaller new entrants out of the market.

Community Regulation No. 95/93 governing slot allocation explicitly refers to the principle that the slot co-ordinator must be able to act with total impartiality as a third party. In Italy, however, the implementation of the Community regulation was incomplete at the time of the Alitalia case. Since Alitalia had been given the role of clearance co-ordinator for all national airports, it was able to allocate slots on a discriminatory basis. Slots were allocated to the airline, which first asked for them, and Alitalia could decide which was the first. The Italian competition authority (*i.e.* the "Autorita") found that in performing its slot co-ordination duties, Alitalia had adopted strategies to conserve and consolidate its own position on the domestic market by obstructing the entry of new competitors. In the course of the investigation, Alitalia surrendered its role of clearance co-ordinator and the Ministry of Transport created an agency responsible for clearance of fully co-ordinated airports. Currently slot allocation is performed by "Assoclearance", an association run by airport operating companies and national carriers.

There was another restriction analysed by the Autorita in the 1996 Alitalia case. With regard to the overlapping on some routes of Alitalia's departure times with those of new small competitors, *i.e.* Aliadriatica and Meridiana, the investigation showed that both new entrants had suffered significant economic damage to the extent of being forced to exit some of their routes. All domestic routes were affected and in particular the Milan-Rome route. The Autorita argued that small air carriers lacked the logistics to react promptly to such aggressive strategies by re-timing their landing and takeoff slots. Such changes could also lead to significant losses for them in terms of advertising expenses and travel agent promotion activities. Finally, the Autorita believed that Alitalia's slot shuffles amounted to a signal to potential new entrants in the Italian air transport market that Alitalia would not be passive in the face of new entry.

Another factor making it difficult for new companies to enter or expand their operations is access to the diffused travel agent network and to computer reservation systems ("CRSs"). When Aliadriatica began flying on certain routes from southern Italian cities to Milan, Alitalia had sent notices warning travel agencies not to issue tickets for the competitor company using the Alitalia mechanical or manual ticketing systems. Since the travel agencies only possessed tickets carrying the Alitalia identification code, these instructions prevented Aliadriatica from expanding its service, which was highly damaging both to the company and to its customers.

The Autorita concluded that Alitalia had abused its dominant position and considering the gravity and the duration of the offences, it fined the company 450 million lire (one percent of turnover). Higher fines were ruled out by the Italian competition law's requirement that fines, in such a case, be calculated with reference to revenue realised on routes affected by the restrictive practices.

The **Chairman** presumed, although it was not stated, that the new slot allocation system probably works better than the old one. He wondered however what were the reasons for including carriers in Assoclearance. He raised this point because of an interesting discussion in the Danish and Norwegian contributions. Both those countries described their slot allocation systems. The main difference between them was that in Norway the carriers own 50 percent of the slot co-ordinator, while in Denmark the co-ordinator is independent of the airlines. The Italian delegate responded that it was simply because of pressure exerted by the carriers. The Autorita had stressed that it was much better to have an independent slot co-ordinator, but the Ministry of Transportation preferred a more "equilibrated" solution.

Next on the Chairman's list was the Japanese contribution which also addressed the issue of slot allocations and stated that with the revision of the Civil Aeronautics Law in 1999, a new system of slot

allocation has been introduced. He called on Japan both to explain its new system and how it will, hopefully, facilitate the development of competition.

A **Japanese** delegate began by noting that Japan's air transport needs had, until recently, been provided by three major airlines and their subsidiaries. However, two new airlines had recently started operations on four domestic routes following the expansion in the number of slots at Haneda airport in 1998 and 1999. On these four routes competition had been increased. The two new entrants' fares were half those charged by the three incumbent major airlines. These low fares were made possible through low-cost operations including reduced in-flight services. The reduced fares were later matched by the three major airlines, subject to certain conditions. New competition had therefore had a substantial impact on airfares on the four affected routes.

Japan's domestic airline network has two hubs: Haneda Airport (Tokyo) and Itami Airport (Osaka). It is essential for those who plan to launch domestic airline businesses in Japan to secure slots at both. This is difficult to do because there are an insufficient number of such slots.

The delegate pointed out that under the old Civil Aeronautics Law, those who wanted to operate an airline had to obtain a license from the Minister of Transport for each route. Route by route licensing has however been abolished through a 1999 amendment of the law, which will come into force in February 2000. From that date, airlines will themselves decide which routes to fly.

The delegate again noted, however, that at congested airports it is difficult to obtain the slots required by new entrants. It has therefore been decided that at heavily congested airports, designated by the Minister of Transport, slots will be reallocated over a certain period. The slot re-allocation policy will be based on an assessment of an airline's efficiency, etc. The Ministry of Transport was currently working on the methodology of making such an assessment.

The **Chairman** followed up with a question concerning whether the Ministry of Transport will be the slot allocator. The Japanese delegate answered affirmatively, and the Chairman noted that the CLP would be very interested in finding out how the Ministry of Transport or another agency actually went about assessing airline efficiency levels.

Besides slot scarcity, the Chairman remarked that economies of density, scale and scope that major carriers, especially those operating hub and spoke systems, are able to realise might constitute another important barrier to entry into this industry. Moreover, such barriers could be increased through mergers and alliances. He noted that, with special reference to hub operators, some written submissions suggested that not only do economies of scale and scope create a barrier to entry, they could also create a barrier to exit. The Chairman pointed out that Poland discussed this issue, and took it further by arguing that point to point operators may not be able to compete with hub and spoke operators even when the former enjoy an efficiency advantage. The Chairman called on Poland to provide more information on this point.

A **Polish** delegate stated that competition between operators is comparable only between destinations where different operators provide air services, for example, Warsaw - New York. LOT (the main Polish airline) competes on this route by offering non-stop flights and low but economically viable fares, *i.e.* not violating anti-dumping rules. It also offers an FFP and benefits from better positioning on CRS screens because non-stop flights are displayed first. Such flights usually obtain about 90 percent of the business because they are more convenient for passengers. In the case of connecting flights offered by hub and spoke airlines, passengers must first be transferred to the hub and then out to the point of destination. Such flights are longer in duration than direct flights. They also entail inconvenience from waiting and transfer times. Moreover, hub and spoke operators incur additional costs arising from

transferring passengers and baggage. The higher costs should, the delegate reasoned, be reflected in higher priced tickets. However, she believed that hub and spoke operators engage in dumping practices in order to attract customers, but conceded that such practices are very difficult to prove.

A different situation apparently occurs when passengers must transfer at the hub airport. In this case, it is very difficult for a combination of point to point services to compete with hub operators because transit passengers usually opt for an operator that can provide a comprehensive, start-to-end service. On the other hand, competition between point to point and hub and spoke operators along identical routes is very high. In theory, both operators have equal chances of attracting traffic as they have the same position in CRSs and offer flights of comparable duration. In these cases, hub and spoke operators compete by: offering lower fares; FFPs; better in flight service; punctuality etc.. Frequently, they increase their competitive advantage by engaging in unfair practices: dumping or predatory prices as well as capacity dumping. In such cases, more efficient but smaller operators face the danger of being gradually eliminated from the market.

The delegate summed up by stating that point to point networks are more convenient for passengers, but hub and spoke networks are more profitable for operators. However, not all hub and spoke operators may be able to compete with other hub and spoke operators evidenced by the fact that some European airlines had to ask for state subsidies in order to maintain their presence in the market. In today's market, air carriers have to co-operate closely and this is reflected in the ongoing mergers and alliances in the air transport sector. This also applies to LOT, which co-operates with other carriers in different fields in order to improve its competitive position.

The **Chairman** again called on the United Kingdom, this time noting that its written contribution discussed barriers to entry at some length, but pointed out how non-hub operators can overcome them.

According to a **United Kingdom** delegate, there are three strategies non-hub operators have used in the UK to compete with hub operators. First, they have tried to establish competing networks, or virtual networks. Secondly, they have introduced services complementary to those offered by hub operators. Thirdly, they have differentiated their services to avoid competing head to head with hub operators.

As to the first strategy, a hub operator has an advantage because customers generally prefer a seamless service, *i.e.* prefer intra-lining as opposed to interlining. Other airlines can, however, create a virtual network by having a series of interlining agreements with other airlines. For example, in the UK, British Midlands has signed a series of non-exclusive code sharing agreements with virtually every US airline. That allows them to provide inter-lining services to large parts of the US and indeed to the rest of the world. They have also been able to create almost a virtual network by entering into frequent flyer agreements with other airlines.

A second, less aggressive approach is to try and fit in with the network operator as much as possible, for example by adding another spoke to an existing hub and spoke network. The complementary airline would be at a disadvantage as regards obtaining feed passengers on that route, but that problem could be partially overcome through a code sharing agreement with the hub operator. In an extreme example an airline could also have a franchise agreement with the hub operator. Clearly, offering complementary services in these ways does not provide the same degree of effective competition as would arise through setting up a competing network. The delegate added that another way to add complementary service is to offer another flight at a convenient, peak time. This would allow an entrant to overcome the problems associated with a lack of feed traffic. For example, by offering a flight arriving or departing so as to coincide with a wave of connecting passengers, a smaller airline might be able to attract some of them by offering shorter waiting times than the hub operator is providing.

The final way of competing with hub operators is to develop a completely different strategy, i.e. to product differentiate. Instead of concentrating on connecting passengers, an airline could focus attention on point to point passengers. In the UK, there are two broad approaches being tried. One is offered by budget carriers who target routes between Britain and Continental Europe where there are a reasonably large number of point to point passengers, mainly routes from London to European capital cities. Often these are targeted on leisure passengers. Because they are filling their planes with point to point passengers, they are not relying on feed passengers. An additional way is illustrated by Virgin who focuses on point to point traffic but is concentrating on routes where there is a high degree of business as well as leisure passengers.

At this point the **Chairman** opened the floor to general discussion.

The opening speaker was a **Canadian** delegate who referred to a merger in process in Canada. On August 13, 1999, an order-in-council was made for a 90 day period so as to permit two large airlines (Canadian Airlines International and Air Canada) and other interested parties to discuss and elaborate various arrangements, including possible mergers, without risk of contravening the competition law.

At the time of the roundtable, the Minister of Transportation had indicated that if a conditional merger agreement were proposed within the 90 day period, he would determine if it serves the public interest or should be conditioned to produce that result. The Minister said he would evaluate any proposed agreement as much from the point of view of transportation as from the competition policy perspective, in order to assure the long-term viability of the air transport industry, and conserve the advantage competition brings to consumers. He also indicated that the Competition Bureau would be consulted on how to achieve an outcome as pro-competitive as possible and that its views would be taken into consideration prior to any decision being taken.

In a letter dated August 30, 1999, the Minister of Transportation requested the Commissioner of Competition to provide him with advice on government action or conditions to mitigate competition concerns arising from a restructuring of the industry. Since then, the Competition Bureau has been undertaking a broad analysis of competition within the Canadian airline industry. The Minister should make this analysis public by the middle of November.

Onex Corporation announced on August 24 a plan to acquire both Air Canada and Canadian Airlines. The plan is conditional on, among other things, there being no merger review by the Competition Bureau. A shareholder vote is scheduled on November 8, just prior to the expiry of the suspension order. Other potential offers have been floated as well. In the meantime, Air Canada has initiated legal proceedings in an effort to have the order-in-council declared illegal. Moreover, there have been questions raised as to the effect of the order and, in particular, whether it would rule out review under the competition law of any proposed merger of the two airlines.

A **Brazilian** delegate indicated that his country's Senate had requested the competition authority to give an opinion on a consolidation project of the Brazilian airline industry, *i.e.* the national development bank of Brazil is promoting a merger of the four largest Brazilian airlines. He noted that when the opinion has been formulated, probably within a few weeks of the roundtable, it should be made public and would be sent to the Committee.

Brazil was very interested in last Spring's seminar in Mexico and the delegate also enjoyed reading the various contributions to the current roundtable, in particular the Secretariat's paper which posed questions that will prove very useful to the Brazilian competition authority. Two issues were especially currents in Brazil. The first concerned proper sequencing in consolidating the industry and creating a new regulatory framework. The competition authority continues to emphasise the need to set up a new

regulatory framework with an independent regulatory body before any consolidation takes place. The second issue surrounds the costs and benefits of merging national firms rather than having them join different international alliances. From the competition perspective, multiple international alliances seem to be the better way to go.

The Mexican, UK, US, Canadian and Italian experiences were very relevant to Brazil. This is why the competition authority is promoting a seminar probably to be held on November 25th to which Committee delegates are invited. The delegate sought Committee support for the seminar and looked to it for crucial input regarding international experience in the airline industry. All OECD countries are welcome to attend especially the five the delegate just referred to.

A delegate from **Spain** wanted to know whether, in the process of analysing the market and looking at time sensitive and leisure passengers, one should suppose that all leisure passengers take scheduled flights. She thought that many leisure passengers take charter flights. In Spain, on certain routes in the summer, 90 percent of travellers take charter flights. Perhaps charter flights should be considered to be a separate market.

A **BIAC** representative, employed by Virgin Atlantic Airways Ltd., intervened to comment on a number of issues under the overarching theme that aviation competition cases should be treated the same as cases arising in any other industry. As the Australian delegate mentioned, airline alliances arise because of the ownership and control rules set up under the Chicago convention. Those rules tend to prevent proper mergers. In his view, these are archaic regulations which should be changed and there is certainly a demand for that. Until they do change, the regulation of aviation by competition authorities is still in danger of being influenced by national political interests. There is a need for global convergence of competition regulation. The delegate argued that competition authorities should look at aviation in the same way as they regard other industries and where possible the regular competition agencies should be responsible for that regulation.

The delegate noted EU experience suggesting that markets should be defined as city pairs and in some cases as airport pairs. Much depends on geography. The Australian delegate mentioned that for service from his country to Europe, indirect routings may be very good substitutes for direct service, but that is not the experience in the transatlantic market between the UK and the US. In 1996 for example, only two percent of passengers between London and the US travelled via continental European hubs. From data on unpublished fares Virgin has calculated that time sensitive passengers between London and New York value their time at the rate of about \$240 per hour. This is a strong disincentive to using indirect services via hubs. The system of hubs dominated by alliances may be helpful to some consumers but not to all. The delegate supported his fellow BIAC representative's point that interlining can deliver many of the supposed benefits that alliances offer.

With reference to slot concentration, the delegate strengthened the UK delegate's point regarding British Airways' sizeable share at London Gatwick. He stated that at 17:00 on peak Mondays BA actually has 77 percent of the slots, so concentration of scarce infrastructure is actually a very big issue. He mentioned that there are alternative ways to deal with slot allocation, for example leasing on limited franchises.

Regarding the anti-competitive effects of loyalty schemes, the delegate agreed with the EC that these can be anti-competitive in any industry and further noted that issue such as dominance of scarce infrastructure and predatory practices were also common to aviation and other industries. He then closed his remarks by stating that if the aviation industry is treated symmetrically with other industries, there will certainly be more mergers and perhaps more alliances as well. But there will also be opportunities for

increased competition by niche and low cost carriers such as, for example, the charter carriers mentioned by the Spanish delegate.

The **Chairman** commented that in his 25 years of competition law enforcement activity, this was the first time he had heard a business person say that his industry should be treated as any other under competition law.

A delegate from **Italy** was the next to speak. As a participant in the Mexican seminar on airline competition, the delegate wished to stress the importance of competition in the market. Potential competition, despite former theoretical articles on the subject, is not very effective in the airline industry. The reason is that incumbent airlines have the possibility of matching price or quantity moves by new entrants. This has often occurred in Italian experience. All the abuse cases against Alitalia involved the incumbent signalling its intention to move against new entry. This shows that potential competition is not very effective. Looking at the effect of liberalisation in the EU, even after two years of permitting cabotage, not much entry has occurred in regular scheduled flights. Regulation in this industry makes it very difficult for new entry on a large scale. European nations still have bilateral agreements with third countries and these restrict entry by foreign air carriers. Such companies cannot go on to third country destinations. The delegate hoped that this system would disappear and that Europe would become a single market with respect to air transport.

The delegate also reminded delegates about the 1997 Working Party 2 roundtable discussion on airports. This included discussion of slot co-ordination and revealed that the dominant airline in most countries was the slot clearance co-ordinator. Interestingly, such slot co-ordinators tended to behave in a pro-competitive fashion. This was because originally there was just one airline in every country and if the clearance co-ordinator behaved well, it could expect similar treatment from its foreign counterparts. After competition developed, this system was undermined and clearance co-ordinators tended to become very restrictive agents. The delegate believed that the whole institutional structure must evolve in a more competitive manner to become something quite different from the current structure.

The **Chairman** then recognised a delegate from Mexico who began by agreeing with the BIAC representative's point that airlines should receive the same competition policy treatment accorded to any other industry. Unfortunately, governments do not agree with that view. In many countries, regulatory authorities are becoming increasingly protective of their airline industries. The delegate was disturbed to learn that the Canadian and Brazilian governments are considering merging their domestic airlines into a single carrier. In Mexico the competition agency faces strong pressure in the same direction. This problem goes beyond slot allotment, market definition etc. The delegate believed that in terms of liberalisation, including opening the sector to international competition, airlines should be treated like other sectors such as telecommunications, electricity and railways. He urged competition agencies to lobby for that result.

A delegate from **Finland** commented on the crucial importance of correct market definition. He also expressed an interest in learning more about how other competition offices are applying econometric techniques to this sector using the rather plentiful supply of data concerning price elasticity of demand that he believed exists in this sector.

Following some general remarks consolidated at the end of this note, the Chairman advanced to the next topic namely the effects of various loyalty programs, *i.e.* FFPs and travel agency commission over-rides ("TACOs"). He noted that the US submission referred to evidence that because of greater opportunities to earn miles on hub carriers, FFPs may cause passengers to favour hub carriers. Nevertheless, the submission states: "...it is unclear whether the elimination of loyalty programs would by itself, significantly increase competition on hub routes". He further noted that the UK contribution also

seems to consider that loyalty schemes are not a subject of particular concern, especially since many companies are requiring executives to fly on the cheaper airlines. The view that FFPs present only minor difficulties appears to conflict with what the EC and several other European competition agencies believe. The Chairman invited the US to explain its position on FFPs.

A **United States** delegate stated that FFPs could raise barriers to entry especially at hub airports dominated by a single airline. How significant a role they play depends on the particular factors under review. The US does not share the view of some other countries that FFPs are in and of themselves a bad thing that need to be scaled back.

The **Chairman** noted that the EC's submission stated that, "...access to an incumbent's FFP may need to form part of a remedy for a dominant position, since it can be a factor in ensuring that new entry, or expansion by existing competitors, is effective." He called on the EC to expand on its views and reasons for any difference between it and the US

A **European Commission** delegate began by noting that there is in fact not much difference. There are no cases where FFPs have been examined in isolation. The issue has instead been raised in the context of packages of undertakings sought to facilitate entry on routes where a merger or alliance leads to or could lead to a dominant position. The remedies have as a starting point the transfer of slots to be used by new entrants on the routes at stake, but there are other issues to consider regarding entry such as convenient access to travel agents, CRSs, airport facilities etc. Access to passenger traffic and in particular the more profitable business traffic is very important. This is why the EC has required in more recent cases that incumbents reduce, at least temporarily, the frequency of their service thereby freeing up space for new entrants should they present themselves.

The EC considers FFPs to be an important marketing tool to attract business traffic. Clearly the FFP of a dominant carrier at a hub is attractive to customers because its large network allows business travellers to collect more points and to redeem the points on a wide range of destinations. In addition, since the business traveller is usually not paying for the ticket but is personally benefiting from the FFP, it would be difficult for a new entrant without an FFP or a developed network at the hub to attract these business customers by pricing its flights lower. This is why the EC has required commitments providing for the possibility that new entrants be permitted, on request, to participate in the FFP of the dominant carrier.

The **Chairman** mentioned that various submissions supported the EC view on FFPs. For example, the Australian delegation seems to consider that loyalty programs represent a significant barrier to the development of smaller airlines. Norway suggests that loyalty programs of dominant airlines at single airports should be "reduced or abolished". The Danish contribution notes that its three main carriers participate in the Scandinavian Airlines Systems' ("SAS") FFP. However it suggests that the absence of FFPs would increase both transparency and price competition and notes that the Danish Competition Council is in the process of investigating the prevalence and use of travel incentive programs. The Chairman wondered why this investigation is necessary if the three carriers participate in the same FFP program and asked further whether these carriers compete on prices.

A **Danish** delegate stated that the Competition Council is only considering making such an investigation. He also noted that the Danish situation is complicated because of a significant decrease in domestic passenger air transport following the construction of a new bridge. In any case, the reason for considering an investigation is that Denmark has not seen any new entry in the domestic market, and it is felt that this might be because of links with the international market. The two existing regional carriers are linked with SAS. Some believe that an additional regional carrier associated with a different alliance partner might help create more domestic and international competition.

The **Chairman** proceeded to discuss another important concern, *i.e.* price predation. The Australian contribution states that, "...predatory pricing is difficult to prove in the airline context as the marginal cost of carrying an extra passenger is minimal." Yet the US contribution states that in May 1999, the DOJ filed suit against American Airlines for predatory practices in response to entry by low cost carriers at its Dallas/Ft Worth hub. He then requested further information about this case.

A **United States** delegate reminded his colleagues that the day before, Joel Klein had talked about the DOJ's desire to bring more cases to court in order to generate clarifying jurisprudence in certain difficult areas. Predation is one such area. In the American Airlines ("AA") case brought in May 1999, the DOJ alleged monopolisation and attempted monopolisation by AA in the Dallas/Ft. Worth airport (the US' third busiest), which constitutes the largest and most profitable AA hub. AA has approximately 70 percent of all non-stop traffic associated with that airport. It faces little competition on many of its spoke routes and as a result is able to charge monopoly fares. The DOJ's complaint accuses AA of repeatedly seeking to drive low cost carriers out of Dallas/Ft. Worth essentially by saturating their routes with additional AA flights, cutting fares and later recouping losses by raising fares and cutting service once the low-cost entrant is driven out. The DOJ asserts that there were several instances of such behaviour on various spoke routes out of Dallas/Ft. Worth aimed at three low-cost carriers. Fares dropped after new entry occurred and traffics increased. In each case AA responded with a combination of more flights and low fares until the entrant was driven away or drastically reduced its operations. DOJ believes it can show that AA increased capacity and reduced its fares well beyond what made business sense except as a means of ejecting the new entrant. The cost of the new flights exceeded the revenues they generated and this was done with the intent of later recouping the losses.

As to the evidence referred to in the complaint, there are first some statements by the CEO of AA in 1996 such as "...if you are not going to get them [the low cost carriers] out then there is no point in diminishing profits." There are a number of statements like this indicating predatory intent. Secondly there is evidence of deliberate disregard of AA's own normal standards for evaluating profitability of routes and responding to low-cost carrier entry. Quoting from AA documents, this was motivated by the notion that, "...the short term cost or impact on revenue of a low cost carrier strategy can be viewed as the investment necessary to achieve the desired effect on market share." This is evidence of a specific intent to monopolise the market. Finally, there is the cost evidence, and this perhaps represents something new in the area of predation. AA not only lowered fares, it also increased capacity. The DOJ contends that, in addition to labour, fuel and sales promotion costs, AA incurred opportunity costs related to the ownership and operation of the planes diverted from other routes to the low-cost carrier routes. All these costs would not have been incurred without the capacity diversion. The complaint further noted:

- on each route AA's revenues on one or more of its added flights were below that flight's variable costs;
- on each route as a result of increasing capacity, AA's total revenues fell below AA's total costs of serving the route and the capacity additions worsened AA's profit performance; and
- on each route, AA's operations were unprofitable under its own measure of route profitability after it added capacity, and such additions made AA's operations more unprofitable.

Probably the most interesting and controversial aspect of this case was the decision to use full opportunity rather than more traditional notions of marginal cost in the cost analysis.

The delegate closed his remarks by noting that AA of course takes issue with this version of the facts and the DOJ's methodology. It has also established a web-site challenging many of the allegations.

The **Chairman** commented that the DOJ appears to be basing its case on a combination of intent to exclude plus a consideration of AA's opportunity costs. On intent, the delegate cited a number of incriminating comments, but the Chairman was sceptical about these. He recalled an abuse of dominance case at the French "Conseil de la concurrence" where there was the same kind of evidence. One of the Commissioners, coming from the private sector, stated that every morning he got up and tried to devise means of getting rid of competitors and that if he had not done so he would have been fired long ago. So in what sense are such statements probative?

The Chairman noted that the provision of air transport requires the input of a number of complementary services such as terminal services, ground handling services, computer services, travel agent services etc. Competition among airlines depends partly on the competitive conditions in such services and on whether or not there is vertical integration between an airline and the provider of such services. In the US, for example, a case arose concerning the relationship between airlines and CRSs, a vertical integration case. A related issue is the relationship between airport operators and certain airline companies. The Czech Republic's contribution discussed an investigation of discrimination regarding airport supplied ground services. The EC contribution also reflects concern about ground handling charges and quality of service. The liberalisation of such services might not have been sufficient. He called on the EC to explain the relationship between a presumed lack of competition in ground handling charges and competition among airlines.

A **European Commission** delegate stated that both airlines and airports were and often still are public undertakings with very close relationships to the national aviation authorities and national carriers. Although liberalisation has brought a lot of changes it should not surprise anyone that where authorities or airports have to take decisions affecting competition, there is still a tendency to identify the public interest with that of flag carriers. He illustrated this with several examples of EU intervention in this field. There is a whole series of cases dealing with discriminatory landing fees in different airports. The leading such case arose when the Brussels airport authority set up a system of landing fee rebates which effectively denied rebates to all but the former flag carrier.

Discriminatory treatment can also occur with regard to the quality of service provided. A decision was taken in 1996 against the Paris airport authority (ADP) for having granted the Air France group sole use of a more modern terminal. The EC secured ADP guarantees that the terminal would be opened up to other carriers.

The delegate also referred to an interesting 1998 case from Italy concerning discriminatory traffic allocation between airports. After complaint from nine European carriers, the EC prohibited the Italian government from enforcing a decree transferring all traffic from Milan-Linate to Milan-Malpensa except the Rome-Milan flights. The EC found this decree to be both discriminatory and disproportionate. It found that although Alitalia could feed passengers from Milan-Linate to its Rome hub to supply onward routes, other carriers would not be able to feed passengers from Milan-Malpensa to other hubs because road and train links from central Milan to Malpensa were insufficient to cope with the passenger volume.

The EU has issued a directive liberalising ground handling services, and has taken action against long term contracts concluded by the Frankfurt airport authority with its best customers. There was also a case, again involving ADP, where discriminatory fees were charged for ground handling services. Finally, in a case arising because of a difference in quality of ground handling services provided by Olympic Airways at Athens airport, the EC secured a number of measures from the Greek government to improve the situation.

The Chairman's next topic concerned how mergers and alliances might increase concentration levels, thereby fostering anti-competitive co-ordination by airlines. An illustration of this was found in a 1992 suit brought against eight major US airlines and their jointly owned fare dissemination service, *i.e.* Airline Tariff Publishing Co. ("ATP").

A **United States** delegate explained that ATP essentially provides a computer database for fares from all the airlines. On a daily basis the airlines forward to ATP all their fares including future fares and discounts. The information is computerised and sent out to the various CRSs. The DOJ's complaint had two counts. One was a *per se* count involving some fifty agreements to raise fares. These were essentially negotiated through communication carried out through the medium of the database itself. This form of reaching agreement on prices was essentially no different than direct communication. There was also a second count involving a rule of reason facilitating practice theory. This was based on ATP being used to facilitate an exchange of information about future price intentions including reactions to certain discount fares. This worked through each filed fare bearing a complicated fare basis code - a long alphanumeric code with a lot of extra footnotes and something called footnote designators. These indicated when a fare was intended to take effect, what the fare class was, when a fare would cease to be effective etc. Such information was not available to travel agents accessing CRSs, *i.e.* the fares were not applied to actual sales. Using ATP, airlines could signal a package as a trial balloon, and wait to see how other airlines chose to react. By the same token they could signal their displeasure with certain discounts. If another airline had a discount in effect, one could post on the database a similar or greater discount with a very short expiry period signalling unhappiness with the discount fare and a willingness to punish the discounting airline unless it changed its fares. This amounted to an elaborate means of negotiating fares with competitors. Some of the information provided by ATP was pro-competitive since it ensures that travel agents are informed of all fares, discounts etc. The DOJ's consent decree in this case was long and complicated because it had to carefully balance the pro- and anti-competitive effects of the system.

The **Chairman** noted that the Mexican contribution discussed a positive relationship between concentration and price levels. The Mexican competition authority ("Commission") has also taken action on excessive pricing on certain routes. That raises the controversial issue of how one determines that prices are excessive. The Commission in 1995 reviewed a number of transactions involving Aeromexico and imposed conditions on those transactions. The Chairman's basic question was, were those conditions really effective in maintaining competition or would it have been better to block the transactions?

A **Mexican** delegate noted that when the Commission allowed a combination of Mexico's two biggest carriers in 1995, both were experiencing major financial difficulties. The two airlines were reorganised under the same corporate unit, *i.e.* Cintra, but obligated to operate individually. The Commission established a series of performance requirements having to do with tariff behaviour, competition on different routes, etc. and set up some very detailed mechanisms to monitor compliance with those obligations.

Mexican legislation allows airlines to set tariffs as they wish. However, if the Commission determines that there is a lack of competition on specific routes, it can request the Ministry of Transportation to impose price controls. The Commission conducted a number of econometric studies comparing tariffs on domestic routes and attempting to hold constant the effect of variables other than differences in the number of competitors. Admittedly, the results can never be conclusive, but they nevertheless serve as the basis for the Commission requesting imposition of price controls. In fact, no such price controls have been applied. The delegate also stressed that the Commission does not like price controls regarding them more as a patch than a remedy. Moreover, as with all behavioural controls, price controls take so much time to apply that the problem may no longer exist once the remedy is ready. It took the Commission more than two years to come up with a price comparison methodology and reach the conclusion that tariffs on some routes were very high.

The **Chairman** next turned to consider efficiencies often claimed for airline alliances and mergers. The written contributions reflected some difficulties in assessing the actual extent of such efficiencies. He noted that the Norwegian contribution discusses the efficiency benefits of mergers and alliances in the course of reviewing the acquisition of Widerøes by SAS. The Chairman called on Norway to expand on the possible efficiency gains of mergers and alliances in air transport and to describe how those gains were assessed and taken into consideration in evaluating the Widerøes/SAS merger.

A **Norwegian** delegate noted that in 1998, one of the two dominant domestic carriers, SAS became the majority shareholder of a regional carrier, Widerøe's. This regional carrier is the third largest carrier in Norway and the sole supplier of air services on almost all routes which are subject to public service obligations, *i.e.* Widerøe's monopoly routes. The other principal carrier, Braathens, is competing with SAS in almost every deregulated domestic market.

The main concern addressed in the merger review was that the acquisition would enable SAS to exploit Widerøe's monopoly routes to strengthen its own position in the deregulated markets, *i.e.* would direct the transit traffic from Widerøe's monopoly routes to SAS' flights in the deregulated markets.

The carriers claimed that the merger would yield a number of efficiency benefits such as reduced connecting time, more efficient execution of ground handling services, terminal facilities, IT and other administrative systems, and facilitate obtaining greater discounts from suppliers. The National Competition Authority ("NCA") did not accept increased discounts as efficiency benefits. Most of them would be obtained because of the carrier's buying-power being increased and were thus treated as a mere transfer of income from suppliers to carriers. It did, however, accept that the regional carrier would save on administrative and IT costs, and that the merger would yield efficiencies relating to ground handling services and terminal facilities at airports where both carriers are present.

The NCA allowed the merger subject to several behavioural conditions. In airline merger and alliance cases, the NCA generally believes that at least some efficiency benefits can be obtained, especially in global alliances where two or more of the parties are simultaneously present at a number of airports. Efficiencies will probably be reaped from: reduced connecting time, so-called "seamless travelling" on multiple leg journeys; more efficient ground handling services and use of terminal facilities if each of the parties have their own organisation at the airports in question; and more efficient use or exploitation of the parties' IT and other administrative systems. The result could be that the parties are able to enter new routes or expand their services on current routes.

Competition could also be restricted when competitors, present or potential, establish an alliance. Where this happens, competition authorities should consider devising conditions to avoid the anti-competitive effects but still allow the efficiencies to be realised.

The **Chairman** then turned to an explicit look at appropriate remedies. The US contribution stated that in most cases structural remedies such as divestiture of certain routes is the appropriate remedy, but also noted that in certain cases, particularly where there is a hub carrier, no structural remedies would induce new entry. The EC contribution suggests that besides slot divestiture other remedies are often needed. He called on the EC for further comment.

A **European Commission** delegate said that in airlines mergers and alliances, "divestiture" generally means surrendering slots. Historically, as in the Swissair/Sabena merger case and the SAS/Lufthansa alliance, the EC initially relied on such a remedy. Experience showed, however, that it was not always sufficient to spark new entry. The Commission therefore began looking for additional remedies apart from the standard set of conditions, for example access to FFPs, equal treatment on CRSs, and

obligations to interline. In the recent Alitalia/KLM merger, for which the decision had not been published at the time of the roundtable, analysis indicated that no carriers were interested in entering the affected routes given the incumbents' high frequencies of service. The EC consequently obtained an undertaking that if a new entrant materialises, the merging parties must reduce their flights by the same number as new entrants choose to add, up to a maximum of 40 percent of existing frequency, for a period of two years after new entry. The EC considered this a possible precedent for other merger and alliance cases.

The **Chairman** asked about the risk that this type of remedy would lead to direct market allocation by the competition authority. The European Commission recognised the risk. It also flagged the difficulties involved in devising appropriate remedies in mergers and alliances where competition problems are confined to a small proportion of the affected routes.

Later in the general discussion, the **United States** offered further comment on tough cases where an alliance offers substantial pro-competitive efficiencies in the great bulk of the markets concerned, but presents competition concerns on certain, particularly hub to hub, routes. There seems to be no question that there will be a decrease in service on such routes and monopoly fares will result. This was the situation faced in the AA/BA matter as regards the Dallas/Ft. Worth - London, and Miami - London markets. How should competition agencies try to maintain competition in the negatively effected markets? The DOJ's solution, which it admitted was not very satisfactory, was to recommend carve outs. This amounted to telling the two airlines that they could co-operate on routes one through ten, but on the 11th they are not supposed to communicate. With all its difficulties, this was still seen as preferable to the solution that the EC recommends in some cases, and for the very reasons the Chairman has alluded to. Imposed frequency reductions could mean that a new entrant could start up knowing that if it adds five routes, the other side will have five routes eliminated. This becomes a very fruitful area for co-ordination and discussions about how to set the level of service, prices etc.

The EC presentation had concluded the formal oral presentation part of the roundtable. At that point, the **Chairman** had highlighted that competition authorities are quite restrained in the sense of not prohibiting mergers as soon as they see a competition problem. They instead try to find remedies, a frequently difficult task. Slot allocation is an obvious route to go but it is not always sufficient. Flight frequency reduction, as the EC pointed out, might be a way to solve the problems but itself creates risks. Before opening the floor for a final period of general discussion, the Chairman called for BIAC reactions.

A **BIAC** delegate noted that the discussion had touched on the themes BIAC referred to in its opening statement. He then passed the microphone to a representative of American Airlines ("AA") who addressed three critical points concerning the need for: better co-ordination and consistency between competition authorities reviewing airline mergers and alliances; clear recognition of the differences between fully integrated alliances and less comprehensive marketing alliances; and greater attention being paid to the efficiency effects of re-allocating slots and other airport facilities. Regulators should also consider the substantial impact that other airports in the same city could have on the need for slot divestiture and frequency reduction in the first instance.

Multi-agency differences within countries and across borders can make competition review a painful ordeal for both the parties and the regulators. There should be a strong effort to consider ways to enhance co-operation and communication among competition agencies assessing airline mergers and alliances. This is particularly the case where, as in the US, transportation authorities share jurisdiction or control with competition authorities.

On mergers and alliances in general, the BIAC delegate felt that it was obvious globalisation and liberalisation means that airline transport has become and will remain a network business. Regulators should carefully consider the value of alliances, the efficiencies of hubs and the benefits of other recent

structural innovations. They should not place primary, or in some cases, sole emphasis on creating new entry opportunities for point to point carriers, especially when the number of so-called time sensitive passengers travelling non-stop on such routes is a relatively small number of the total passengers travelling on the network. Regulatory authorities should undertake full blown assessments of the likely competitive effects of proposed mergers and alliances particularly with regard to prices and frequency and quality of service.

With regard to fully integrated bilateral code-share alliances and in particular those involving co-ordination of capacity and price, AA recognises that these are properly the object of competition review. However, governments should carefully note that there are often significant differences in operation among the alliances. In the US for example, multilateral brand alliances are not subject to any type of regulatory pre-clearance. AA believes this should continue because, unlike the fully integrated code share alliances, multilateral brand alliances are aimed at providing seamless interline service that is superior to random interline interconnections across airports. As a result of these alliances, customers enjoy reciprocal FFPs, lounge access and many other benefits. In the One-world alliance for example there is no requirement regarding code sharing and not all members do in fact code share.

As for remedies involving slots, these should ensure that new carriers continue to have an incentive to obtain slots in the normal fashion and make efficient use of any slots they get. It is also important to recognise that capacity constraints at one airport in one city pair may be neutralised by the provision of capacity at other airports. For example, years ago pessimists predicted a failure for US airline regulation because of capacity constraints at Washington National and La Guardia airports. Today, Dulles airport has become the largest airport in the Washington area and has become a major hub for Northern and Virginia. In New York, Newark has become a major hub serving more business and leisure destinations than can be reached from La Guardia. This and the fact that Virgin and United have begun six new services to the US since 1977 from London Heathrow suggests that the severity of capacity constraints at London Heathrow are over-stated. Indeed, the London area has three airports available for business and leisure passengers. Like Newark and Dulles in the US, Gatwick has grown to become a major hub for both intra-EU and other international services. For business passengers travelling non-stop, Gatwick is a reasonable and often preferred substitute for Heathrow. The delegate also noted that regarding the Continental/Northwest merger, the DOJ took the position that Newark and La Guardia are a common pair or city, notwithstanding the fact that Newark is not served by high-speed train service from lower Manhattan as are both Heathrow and Gatwick from central London.

Another **BIAC** delegate, associated with the Dallas-Fort Worth International Airport ("DFWIA"), based his intervention on participation in the various competition reviews of the AA/BA alliance. He drew attention to problems arising when alliances are reviewed simultaneously by multiple competition authorities.

In the AA/BA case, the DFWIA had to make presentations to four different competition agencies: the US Department of Transport ("DOT"), the US DOJ, the United Kingdom's Office of Fair Trading ("OFT"), and the European Commission. At times, these agencies produced conflicting remedies. In terms of the Dallas/Ft. Worth - London market, the DOJ proposed a carve out (which meant that price co-ordination would be prohibited on that route) while the EC and the OFT proposed that there would be frequency reductions but carriers could co-operate on frequency and pricing. In terms of slot divestment, the numbers proposed varied from 215 to 330 depending on the competition authority. On the Dallas/Ft. Worth - London route, one agency proposed that slots should be given up for a new carrier and another concluded that a new entrant was unlikely to materialise on the Dallas route so there should not be any slots made available. These perplexing and conflicting remedies were very difficult for the DFWIA to appreciate especially since they arose out of a common desire of the various competitions authorities to create competition for time sensitive business passengers. Reiterating the point made by the BIAC

delegate from the Metropolitan Washington Airports Authority, the delegate emphasised that the number of time sensitive passengers transported on these hub-to-hub routes is very small. In the case of the Dallas -London route, it was less than ten percent of total passengers transported in a recent year. In addition, the DFWIA found there was very effective one stop competition. Roughly 15-20 percent of the travellers used one stop routings. The delegate advocated greater co-operation among the competition authorities before final decisions are rendered, and hoped that the CLP would discuss this at future meetings.

The **Chairman** commented that decisions are not taken lightly by competition authorities. They could be wrong but, as the discussion demonstrated, they devote a lot of thought to their decisions. As for competition agency co-operation, he agreed this is particularly relevant for airlines. It is an issue currently much discussed at the CLP, the OECD's Joint Group on Trade and Competition, and other fora. The present roundtable was partly motivated by a desire to promote convergence in approaches to airline cases and will hopefully help to address some of the airlines' concerns. The Chairman then opened the floor to general discussion.

A delegate from the **European Commission** supported increased co-operation between competition agencies, but noted that although there is a co-operation agreement between the EC and the US competition authorities, this is not the case between the EC and the US DOT. The EC would like to extend the co-operation agreement to the US DOT or see sole jurisdiction given to the US competition authorities. Either solution would help improve on current co-operation.

A delegate from the **United States** DOJ, added that in the AA/BA matter there was a great deal of communication between the DOJ and both the OFT and EC. Had there not been so much consultation, the results might have been even more divergent than what occurred. A United Kingdom delegate agreed with that appraisal.

A **United States** delegate, from the US DOT, made three points. First, there is increasing evidence that global alliances, certainly those across the Atlantic, are creating improved service for millions of passengers in thousands of markets. This does not mean there are no competition issues, but the alliances appear to be producing a downward pressure on fares particularly in behind gateway markets. He referred to a DOT paper on this topic circulated, belatedly, as a room document to the roundtable and he encouraged delegates to read it. Second, the delegate referred to BIAC's closing presentation, to argue that just as one should avoid treating remedies as universally applicable, one should also avoid blanket assumptions about what kinds of situations competition regulators will have to examine in the future. Although the DOT currently does not regularly look at mere brand alliances, this does not mean it will never do so regardless of which carriers or markets are involved. Finally, he noted that as regards the Dallas authority representative's remarks about the difficulties of dealing with multiple competition authorities, one of the four agencies involved in the AA/BA case, the DOT, recommended no remedies.

A **Mexican** delegate noted that the roundtable had not considered the failing firm defence which surfaces quite often in airline cases in his country. To what extent should the defence be continually re-applied? He also stated that many current airline problems have to do with bad or inadequate deregulation. Somehow this process has not been as harmonious and far reaching as in other sectors.

On the failing firm point, the **Chairman** reminded delegates of the CLP's former roundtable on that matter. It is true that different standards of review are being applied by different agencies. He further remarked that given the economics of air transportation, a special methodology might be needed for applying the failing firm defence to this sector.

Midway through the roundtable, the Chairman had reinforced the position espoused by several delegations that airlines should receive substantially the same treatment accorded to other sectors. Governments, he thought, would not be surprised that competition authorities hold such views and such a consensus is not likely to sway them. Nevertheless, he thought the roundtable had provided three kinds of information that should be useful in helping to change government policy. First, it drew attention to the fact that many of the competition problems arising in this industry stem directly or indirectly from regulation, particularly in the international field. Second, competition enforcement as regards the sector is broadly similar internationally. Competition agencies use or tend to use the same criteria to assess situations. Third, given the protection received from current regulatory regimes, airlines could be tempted to develop anti-competitive strategies to protect themselves from competition.

AIDE MÉMOIRE DE LA DISCUSSION

Le **Président** commence par noter le vif intérêt manifesté par le monde des affaires pour la table ronde, comme en témoigne la présence de l'importante délégation du Comité consultatif économique et industriel (BIAC). Il invite les représentants du BIAC à prononcer une brève déclaration d'ouverture, en leur indiquant qu'il les invitera à intervenir de nouveau à la fin de la table ronde.

Un délégué du **BIAC** fait d'abord valoir que les fusions et les alliances de compagnies aériennes sont virtuellement à même d'engendrer des avantages importants pour les consommateurs. Selon diverses enquêtes et analyses, elles ont en effet permis à ces derniers de profiter non seulement d'une baisse des tarifs, mais aussi d'une amélioration du service sur les routes très fréquentées et de l'accès aux petites et moyennes localités. En outre, des économies de densité ont été réalisées grâce aux réseaux des alliances internationales qui offrent des liaisons aériennes intégrées à l'échelle mondiale et relient les marchés secondaires plus petits aux réseaux de transport mondiaux. La fréquence et la capacité accrues qu'offrent les alliances indiquent également que les tarifs des liaisons sans escale vont en fait diminuer. A titre d'exemple, le délégué signale que sans l'accord de type "ciel ouvert", les tarifs communs des Etats-Unis et du Royaume-Uni ont été en 1998 en moyenne de 36 pour cent supérieurs aux tarifs comparables établis en coopération pratiqués par les alliances américano-européennes bénéficiant de l'exemption antitrust.

S'agissant de la réglementation des alliances de compagnies aériennes, le délégué préconise que les autorités antitrust, dans l'examen des alliances, appliquent les principes de non-discrimination et de traitement national, et il recommande d'éviter le recours à des mesures de politique industrielle. Certaines propositions formulées dans la note de référence du Secrétariat soulèvent selon lui des inquiétudes quant à l'application de ces principes. On peut ainsi lire dans la note que les programmes pour grands voyageurs risquent d'être anticoncurrentiels et que leur suppression permettrait de renforcer la concurrence dans le transport aérien. Le BIAC estime que pareille affirmation suppose l'application de principes qui ne sont pas conformes aux règles de concurrence et qu'elle devrait probablement être retirée de la note. Le délégué est d'avis que les autorités réglementaires devraient concentrer leur action sur l'élaboration de normes communes pour l'examen des alliances, et il préconise une plus grande transparence dans ce processus. Enfin, le délégué du BIAC recommande que lorsque l'exemption antitrust est accordée à une alliance, tout examen de cette exemption imposé ultérieurement soit mené conformément aux conditions dont elle est assortie et dans le cadre traditionnel de la règle de raison. Pour récapituler, le délégué est d'avis que l'application de la législation antitrust en ce qui concerne les alliances de compagnies aériennes devrait reposer sur les principes du traitement national, de la non-discrimination, de la convergence et de la concurrence.

Un autre délégué du **BIAC**, qui représente la *Metropolitan Washington Airports Authority* ("*Metropolitan Authority*") formule d'autres observations concernant la note du Secrétariat. Selon lui, celle-ci insiste trop sur le trafic entre paires de villes ou entre aéroports-pivots. La *Metropolitan Authority*, en se fondant sur les données du ministère des Transports des Etats-Unis et d'autres sources, a étudié en profondeur les conséquences des alliances aux aéroports de Washington. Elle est ainsi arrivée à la conclusion qu'une analyse du trafic entre les aéroports points d'accès était insuffisante et qu'il fallait plutôt décomposer le trafic aérien entre les aéroports points d'accès en quatre catégories de trafic : entre deux aéroports points d'accès ; entre un aéroport point d'accès et un point ultérieur à un autre aéroport point d'accès ; entre un point antérieur à un aéroport point d'accès et un autre aéroport point d'accès ; et entre un

point antérieur à un aéroport point d'accès et un point ultérieur à un autre aéroport point d'accès. La *Metropolitan Authority* a systématiquement constaté qu'en moyenne seulement 25 pour cent des sièges offerts par son principal transporteur membre d'une alliance (en l'occurrence Star Alliance) -- United Airlines -- étaient occupés par des passagers dont le point de départ ou la destination était soit Washington, soit Francfort, principal aéroport-pivot européen de Star Alliance. Autrement dit, dans un avion de 300 places, seulement 75 passagers voyagent effectivement de Washington à Francfort. Les 75 pour cent restants viennent de villes antérieures à Washington (par exemple, Denver, Chicago ou Atlanta), ou bien ont une destination située au-delà de Francfort (par exemple, Vienne, Varsovie, l'Afrique).

Le délégué du BIAC fait également remarquer que la note du Secrétariat s'intéresse principalement aux voyageurs d'affaires qui attachent de l'importance au facteur temps. Or, fait-il remarquer, les vols reliant Washington et Francfort ne comprennent qu'environ 30 pour cent de sièges en classe affaires, ce qui veut dire que seulement 22 des 175 passagers voyageant entre Washington et Francfort (soit à peine huit pour cent) peuvent être considérés comme des voyageurs pressés. Il est d'avis qu'une analyse centrée sur une clientèle ne représentant que huit pour cent du trafic passagers total entre deux points ne constitue pas une base raisonnable pour évaluer la concurrence entre les compagnies aériennes. Le reste des passagers (92 pour cent) disposent tous d'autres possibilités pour voyager à partir de leur point de départ réel, qui dans la plupart des cas n'est pas Washington, et leur destination réelle, qui la plupart du temps n'est pas non plus Francfort.

Le délégué du BIAC fait remarquer que même en centrant l'analyse exclusivement sur le trafic d'origine et de destination entre Washington et Francfort, au moins 25 pour cent des passagers ne prendront pas une compagnie de Star Alliance pour arriver à Washington Dulles ou pour en partir, malgré le service sans escale que l'alliance offre entre Washington et Francfort. La *Metropolitan Authority* est d'avis que les alliances offrent à la clientèle de la région de Washington beaucoup plus de choix de vols que si elle devait dépendre uniquement du trafic du marché local de Washington.

Le délégué se dit également préoccupé par les mesures de réglementation de la concurrence auxquelles il est fait allusion dans la note du Secrétariat. Selon lui, ces mesures risqueraient de désavantager l'aéroport de Washington Dulles par rapport à ses concurrents, tout au moins pendant une courte période, étant donné les autres acheminements possibles qu'offre le marché et les nouveaux itinéraires qui pourraient être créés si des restrictions étaient imposées à United, Lufthansa ou à d'autres alliances. Selon la *Metropolitan Authority*, c'est l'accroissement des services qui stimule la concurrence. C'est pourquoi le délégué s'inscrit en faux avec les suggestions voulant que pour améliorer la concurrence, il faille réduire le service d'un concurrent, ne serait-ce que pendant une courte période. La *Metropolitan Authority* estime nécessaire de procéder à une analyse plus approfondie de tous les choix concurrentiels de liaisons aériennes entre les Etats-Unis et l'Europe, pour faire en sorte que toute mesure prise se traduise par des avantages concrets et ne risquent pas, au contraire, d'être nuisibles aux consommateurs des deux côtés de l'Atlantique.

L'intervenant suivant du BIAC, qui représente l'Association du transport aérien international (IATA), explique que l'IATA représente 270 compagnies aériennes internationales du monde entier qui transportent plus de 98 pour cent du trafic passagers international. Il espère que la table ronde permettra de mieux comprendre la nature mondiale de l'aviation et la nécessité, dans le cadre de l'analyse des alliances du point de vue de la concurrence, de tenir compte de la plus grande harmonisation de l'aviation et des réalités aux deux extrémités des routes desservies. En ce qui concerne la note du Secrétariat, le délégué estime que celle-ci ne fait pas une place suffisante aux activités intercompagnies (l'"interligne") -- processus pourtant vieux de 55 ans qui s'est développé un peu comme un accident de l'histoire, ce qui vaut également pour les alliances. Les activités intercompagnies favorisent selon lui la concurrence, mais étant donné leur omniprésence, elles risquent d'être sous-évaluées et insuffisamment protégées.

Le **Président** fait remarquer qu'il sera difficile, faute de temps, d'inviter les délégations qui ont présenté des contributions écrites à en développer tous les points saillants. Il a donc plutôt l'intention de leur demander de répondre à certaines questions ou de fournir un complément d'information sur divers sujets. Il exprime également son intention de mentionner à l'occasion une contribution écrite sans demander qu'elle soit présentée.

Le Président met en contraste la situation au plan intérieur et au plan international en ce qui concerne l'accès de nouveaux entrants au marché du transport aérien. Au plan intérieur, dans de nombreux pays, les contraintes qui limitent l'établissement de nouvelles compagnies aériennes intérieures sont relativement peu nombreuses. En revanche, l'accès aux routes internationales est en général régi par les accords bilatéraux de transport aérien, qui ont pour effet de limiter les itinéraires pouvant être desservis, le nombre de transporteurs présents sur ces itinéraires, la fréquence des vols et parfois même la capacité et les tarifs offerts. Il s'agit là d'un sujet de préoccupation du point de vue du développement de la concurrence dans un secteur d'activité dont l'envergure est très souvent mondiale. Le Président appelle ensuite l'attention des participants sur un document de séance remis très récemment par la Chambre de Commerce Internationale, intitulé "Convergence des lois et des politiques de la concurrence dans le domaine du transport aérien, en référence en particulier au contexte UE/Etats-Unis" [qui figure dans les présents Actes]. Il recommande cet intéressant document à l'attention des délégués et en cite deux passages :

...l'ICC considère qu'il devrait y avoir une plus grande convergence des réglementations et des politiques de la concurrence des différentes autorités nationales et internationales compétentes en matière de transport aérien. Cette convergence devrait commencer par le marché transatlantique et être ensuite étendue, autant que possible, à d'autres zones (voir page 257 de cette publication).

Le Président fait remarquer que la table ronde vise notamment à favoriser cette convergence. Dans les conclusions de la note précitée, le Président constate que l'ICC partage l'opinion exprimée par un représentant du BIAC, puisqu'elle se déclare :

...favorable à une plus grande liberté des échanges de services aériens dans le monde. Un tel environnement exige la libéralisation du cadre réglementaire international, qui peut permettre et stimuler la coopération transnationale entre transporteurs, conformément aux règles d'une concurrence loyale (voir page 257 de cette publication).

Le Président mentionne que l'Australie, dans sa contribution, juge que les dispositions actuelles des accords [bilatéraux] de transport aérien relatives à la participation et au contrôle constituent des obstacles de taille au développement de la concurrence dans le transport aérien, et qu'elle se prononce résolument en faveur d'autres mesures de libéralisation. Le Président invite l'Australie à développer sa position.

Un délégué **australien** fait remarquer qu'en 1944, dans la Convention de Chicago, une décision lourde de conséquences a été prise à l'égard des compagnies aériennes. En effet, contrairement à ce qui se passait dans n'importe quel autre secteur d'activité, il a été décidé que celles-ci seraient réglementées de façon à protéger les compagnies aériennes nationales et à éviter la concurrence des compagnies étrangères. Cinquante cinq ans plus tard, il semble bien que nous ayons fait fausse route. Le système se désagrège petit à petit. Le délégué se dit frappé de voir à quel point les compagnies aériennes sont traitées différemment des entreprises des autres secteurs où interviennent des échanges internationaux. En effet, l'hypothèse générale qui sous-tend les échanges est que les personnes peuvent commercer librement, sauf restriction. Dans le transport aérien, c'est l'inverse. Toutes les activités sont soumises à restrictions, sauf exemption. Si l'on compare les grands dossiers de l'aviation internationale et ceux du commerce, on trouve d'un côté les accords bilatéraux ainsi que des arrangements propres au secteur, et de l'autre, la dimension multilatérale et des négociations sur une vaste gamme de produits en vue de libéraliser les échanges. Les règles du

transport aérien ne font pas partie du cadre de l'OMC, et ne sont par conséquent pas soumises aux principes fondamentaux de cette organisation, tels que notamment la non-discrimination et le traitement de la nation la plus favorisée. L'ensemble du système s'appuie sur de nombreuses restrictions visant la concurrence et l'exercice des activités. Le système bilatéral limite la participation au capital des compagnies aériennes et l'accès aux capitales, les dessertes, le nombre et la fréquence des vols, le nombre de sièges offerts, les types d'aéronefs exploités et les tarifs pratiqués. Il restreint la concurrence, fait augmenter les coûts et les prix, et réduit la variété des produits. La libéralisation, là où elle a eu lieu, a déjà permis de stimuler la concurrence, de faire baisser les tarifs, d'inaugurer de nouvelles routes et destinations et d'améliorer la qualité des services. Il reste encore beaucoup à faire en matière d'amélioration.

Le délégué australien mentionne que le système bilatéral a été édifié sur l'hypothèse selon laquelle chaque pays disposerait d'un transporteur qui serait détenu et contrôlé dans une large mesure par des intérêts nationaux. Il s'ensuit une mauvaise attribution des ressources au plan international, certains pays gaspillant un capital précieux et d'autres ressources rares pour soutenir des compagnies aériennes inefficaces qui ne pourraient survivre sans l'aide de l'Etat. Des industries plus efficaces sont pénalisées parce qu'elles doivent à la fois se disputer avec les autres les mêmes ressources et utiliser un transport aérien international coûteux.

L'aviation mondiale est parvenue à un tournant décisif de son développement. Les inefficacités imposées au système par les arrangements bilatéraux ainsi que les avantages qu'offrent des services aériens concurrentiels au plan international et plus efficace sont maintenant évidents. Les accords réciproques de type ciel ouvert se multiplient. Une forte croissance révèle les inefficacités du système et démontre bien les avantages de la déréglementation. Il n'est pas moins évident non plus que le système est à l'origine d'un fonctionnement relativement inefficace des entreprises. La structure industrielle serait très différente sans le système réglementaire. Par exemple, au lieu des alliances internationales qui se forment ici et là, on pourrait assister à des fusions plus nombreuses et plus efficaces, ainsi qu'à l'intégration de compagnies aériennes de différents pays. En Australie, en liaison avec l'accord de partage de services Qantas/BA, la Commission Australienne de la Concurrence et de la Consommation (ACCC) a tout d'abord été frappée de voir que les concurrents demandaient l'autorisation de s'accorder notamment sur les prix, la capacité, la fréquence des vols, les sièges. Toutefois, après avoir analysé la question plus en profondeur, l'ACCC a pu se rendre compte que ces accords étaient envisagés parce que la réglementation excluait la possibilité de fusion, pourtant plus efficace. L'ACCC est d'avis que la vague d'alliances qui se forment actuellement est motivée par le fait que les compagnies se rendent bien compte que dans un délai de cinq à quinze ans, le système dit "de Chicago" dans son ensemble appartiendra au passé. Elles se hâtent de se positionner en fonction de cette évolution et se préparent pour être en mesure de répondre à leurs clients du monde entier. Bien qu'il y ait tout lieu de se féliciter de ces évolutions, on ne saurait écarter la possibilité que certains des arrangements en question visent à freiner la concurrence.

Le Président donne ensuite la parole à la **Commission européenne**, qui explique dans sa contribution que le transport aérien européen a traversé ces dix dernières années une période de transition entre un cadre réglementaire rigoureux fondé sur les accords bilatéraux et les duopoles, n'autorisant pratiquement aucune concurrence, et un marché unique. De l'avis de la CE, la libéralisation a sans aucun doute apporté des avantages pour les consommateurs, mais le processus de libéralisation ne suffira peut-être pas à lui seul pour favoriser la prestation de services de meilleure qualité à plus bas prix. Le Président invite la CE à donner son avis sur les résultats et les limites de la libéralisation du transport aérien au sein de l'Union européenne. Il lui demande également d'expliquer pourquoi une exemption par catégorie a été accordée dans le cadre de l'accord EEE pour autoriser la collaboration en matière de prix aux fins des activités intercompagnies.

Un délégué de la Commission européenne fait remarquer que l'organisation du transport aérien à l'intérieur de l'UE a été modelée par trois trains successifs de mesures réglementaires (1988, 1990 et 1993).

Le but de cette libéralisation graduelle était d'éviter les effets de confusion et de donner aux compagnies aériennes le temps de s'adapter à leur nouveau cadre d'activité. La libéralisation a eu pour effet d'élargir le marché unique au transport aérien à l'intérieur de l'UE. En principe, tous les transporteurs communautaires peuvent désormais offrir desservir n'importe quelle route sur le territoire de l'Union.

Le processus de libéralisation a eu pour effet favorable d'élargir le choix de compagnies aériennes dont disposaient les consommateurs de l'UE. Il a également stimulé une forte croissance de l'offre de transport aérien et encouragé une plus grande utilisation des tarifs promotionnels. En revanche, ce processus s'est accompagné d'évolutions qui ont empêché les consommateurs de tirer pleinement parti des réformes. D'abord, certains transporteurs nationaux ont éprouvé des difficultés financières et sociales et n'ont pas encore mené à bien le processus d'adaptation nécessaire à un environnement plus concurrentiel. On a ainsi eu très largement recours à des programmes de restructuration bénéficiant de l'aide de l'Etat. En outre, bien que les tarifs promotionnels se soient généralisés, les tarifs des billets intégralement souples en classe affaires et en première classe ont augmenté. Par ailleurs, il est très difficile aux nouveaux entrants de prendre pied sur certaines routes en raison de problèmes d'encombrement aux heures de pointe dans un certain nombre d'aéroports européens, ce qui a bien sûr pour effet de limiter la concurrence entre les compagnies. Les transporteurs en place jouissent d'un avantage considérable aux aéroports encombrés en raison de l'exercice généralisé des droits acquis quant aux créneaux de décollage et d'atterrissage. En outre, les coûts liés aux services aéroportuaires ont pris une importance déterminante avec l'intensification des mesures visant à réduire les coûts. C'est pourquoi il importe que ces services soient ouverts à la concurrence et qu'aucune compagnie ne subisse de discrimination à cet égard.

La déréglementation au sein de l'UE a déclenché une vague d'arrangements de coopération allant du partage de codes jusqu'à des formes très intégrées de coopération entre les compagnies aériennes. Ces accords devraient certes se révéler avantageux, mais ils risquent en revanche de réduire la concurrence. Ils méritent également l'attention des autorités de la concurrence car il est possible que les compagnies nationales détiennent encore de très solides positions sur le marché et qu'elles soient tentées d'adopter des pratiques prédatrices, une tarification excessive ou un comportement d'exclusion. En résumé, la CE est d'avis que la libéralisation doit s'accompagner d'une application effective des règles de la concurrence.

Le délégué de la CE confirme que dans le cadre des accords intercompagnies de l'IATA, la consultation au sujet des tarifs passagers des services réguliers est exemptée de l'interdiction relative aux accords restrictifs, au motif que les consultations tarifaires peuvent contribuer à l'acceptation générale des tarifs intercompagnies, dans l'intérêt des transporteurs aériens comme des usagers des services de transport. Cette consultation ne doit toutefois pas aller au-delà de la facilitation des activités intercompagnies. Elle doit se limiter aux tarifs qui donnent lieu à de véritables services intercompagnies, reposer sur une participation facultative et ne pas déboucher sur des accords concernant les tarifs ou les conditions connexes. En outre, les transporteurs qui participent aux consultations sont obligés de mener des activités intercompagnies avec tous les transporteurs concernés. En mai 1999, l'exemption par catégorie a été prorogée jusqu'au 30 juin 2001. La décision de la prolonger de nouveau sera prise en fonction des résultats d'une étude de ses effets qui a commencé en 1998. Le délégué fait remarquer que les consultations tarifaires pour le fret ne sont plus couvertes par l'exemption par catégorie de 1996. L'une des questions fondamentales de l'étude de la CE est de savoir si l'accord multilatéral sur les services intercompagnies de l'IATA conserve son utilité compte tenu de l'expansion des réseaux et des alliances entre compagnies aériennes, ou encore si un accord multilatéral sur les services intercompagnies est possible sans consultations tarifaires.

Avant de se pencher sur les questions d'attribution des créneaux horaires et des programmes pour grands voyageurs, le Président estime nécessaire d'examiner la définition du marché, en particulier à la lumière de l'intervention initiale du BIAC. La plupart des contributions écrites font une place importante à ce sujet, notamment à la question de savoir si les marchés devaient être définis d'aéroport à aéroport, de

ville à ville ou de région à région. Il fait remarquer qu'il y a également lieu de déterminer si les marchés doivent être définis par catégorie de client (autrement dit, s'il existe des marchés distincts pour les clients sensibles au facteur temps et pour les voyageurs d'agrément). Troisième question, il convient de déterminer si les vols indirects (c'est-à-dire avec correspondance) peuvent être des substituts valables des vols directs. Enfin, le Président évoque la question de savoir si les organisateurs de voyages et les particuliers constituent des marchés distincts.

Le **Président** fait remarquer que le Royaume-Uni, dans sa contribution, fait une large place aux questions de définition des deux marchés, en commençant par les critères à appliquer pour décider si les vols sans escale et les vols indirects entre deux points peuvent être considérés comme faisant partie du même marché pertinent (cette question est également traitée par l'Australie). La contribution britannique aborde ensuite la question de savoir si les vols entre paires de villes qui arrivent à différents aéroports de la même ville ou en partent (comme Gatwick et Heathrow pour Londres) doivent être considérés comme faisant partie du même marché. S'agissant du second point, qui a été étudié dans le cadre de l'examen de la fusion British Airways/City Flyer Express, la contribution du Royaume-Uni fait valoir que :

...du point de vue de l'application pratique du droit de la concurrence, il est en général tout à fait indiqué de définir le marché pertinent comme englobant tous les aéroports des villes. L'avantage important de cette définition est qu'elle permet de prendre en compte dans l'analyse de la concurrence les compagnies aériennes à tarif réduit, qui opèrent rarement à partir des grands aéroports.

Le Président invite le Royaume-Uni à développer l'approche qu'il a adoptée en matière de définition du marché dans l'exemple cité ainsi que dans le dossier American Airlines/British Airways.

Un délégué du **Royaume-Uni** commence son intervention en mentionnant la substituabilité des vols sans escale et des vols indirects ou avec une escale. Selon lui, il est largement admis que le problème ne concerne réellement que les voyageurs d'affaires, sensibles au facteur temps, et que la substituabilité est plus ou moins tenue pour acquise en ce qui concerne les autres catégories de voyageurs. De plus, s'agissant de l'importance du facteur temps pour les voyageurs d'affaires, il est nécessaire selon lui d'être plus précis. Le temps de ces passagers a un coût d'opportunité élevé. En outre, à leurs yeux, la substituabilité entre vols directs et vols indirects ne dépend pas uniquement de la durée d'un vol. Les voyageurs d'affaires tiennent beaucoup à arriver juste avant et à repartir juste après une réunion. Ils attacheront donc une plus grande valeur à un vol à l'horaire très commode qu'à un vol qui est seulement court. Autrement dit, ce qui leur importe, ce sont les heures d'arrivée et de départ, mais aussi la fréquence de service.

Selon le délégué, le service sera probablement de qualité nettement supérieure sur les routes desservies par des vols sans escale très fréquents. En revanche, lorsque la fréquence des vols est moins importante, un vol indirect pourrait être une bonne solution de rechange. Quoi qu'il en soit, le délégué britannique rappelle qu'il ne suffit pas de démontrer qu'un service est de meilleure qualité pour qu'il constitue un marché distinct. Ce qu'il faut au contraire déterminer, c'est le consentement des consommateurs à changer de produit en fonction de variations de prix. Il note qu'il est en fait très difficile pour les autorités de la concurrence d'évaluer ce consentement, surtout sur les marchés des vols long-courriers. De nombreux accords bilatéraux interdisent les vols indirects à des tarifs inférieurs à celui du service sans escale. Dans ce cas, il est très difficile pour un service avec escale de soutenir la concurrence sur le marché, puisqu'il ne peut pas être offert à un prix plus bas qui compenserait la différence de qualité du produit. C'est également pour cette raison que les autorités de la concurrence éprouvent de la difficulté à prédire comment les consommateurs réagiront une fois levées les restrictions bilatérales.

S'agissant des villes possédant plusieurs aéroports, pour déterminer si les aéroports font partie du même marché, le délégué fait remarquer qu'une fois encore la réponse dépend de la substituabilité pour le consommateur. Ainsi, au Royaume-Uni, Heathrow est en général considéré comme un produit de meilleure qualité que Gatwick. Les voyageurs d'affaires sont disposés à payer davantage pour avoir leurs services à Heathrow. Là encore, ce n'est pas parce que certains voyageurs expriment une nette préférence pour un aéroport que l'on peut en conclure que les deux aéroports constituent deux marchés distincts. Il faut en effet déterminer si les consommateurs seraient prêts à changer d'aéroport à la suite de modifications des tarifs. Le problème qui se pose alors est de distinguer les préférences en matière d'aéroports des autres facteurs. Par exemple, sur la route Londres-Houston, British Airways offre un vol par jour à partir de Heathrow et Continental en offre deux à partir de Gatwick. Si un client choisit le service de Continental à partir de Gatwick, on ne saura pas avec certitude si c'est parce qu'il préfère Gatwick à Heathrow ou Continental à British Airways, ou encore parce que la fréquence du service est meilleure.

Le délégué fait remarquer qu'il est très dangereux d'exclure des substituts possibles d'une définition. Par exemple, sur la route Londres-Houston, si l'on définit le marché comme étant Heathrow-Houston, British Airways détiendrait la totalité du marché. Ce faisant, on ne tiendrait pas compte d'un concurrent voisin assurant pratiquement la même desserte avec une meilleure fréquence. L'autre problème pratique que pose l'adoption d'une définition très étroite du marché est que certaines compagnies aériennes, notamment les compagnies à tarif réduit, n'utilisent ni Heathrow ni Gatwick. Par conséquent, si l'on adopte une définition du marché qui correspond aux liaisons d'aéroport à aéroport, on exclut la concurrence de toutes les compagnies à tarif réduit, ce qui est bien sûr contre-indiqué.

Le **Président** prend acte avec satisfaction de ce rappel concernant la difficulté de formuler des définitions justes du marché ainsi que l'effet que pourrait avoir une définition étroite en excluant une partie de la concurrence potentielle. Il souligne cette intervention parce que les Etats-Unis, dans leur contribution, fournissent au sujet de la définition du marché, dans l'affaire AA/BA, l'explication suivante : "... le ministère de la Justice a déterminé que l'aéroport Heathrow de Londres constituait un marché distinct parce qu'une analyse des tarifs des marchés de paires de villes avec Heathrow et Gatwick respectivement a démontré que la plupart des voyageurs payant le tarif élevé (c'est-à-dire les voyageurs d'affaires, pour qui le facteur temps est important) choisissent Heathrow." Notant la divergence de vues avec le Royaume-Uni, le Président invite la Division antitrust du ministère de la Justice des Etats-Unis à étudier les éléments de convergence possibles d'une définition du marché.

Un délégué des **Etats-Unis** commence son intervention en reconnaissant dans une large mesure la validité de la méthode décrite par le délégué du Royaume-Uni. La définition du marché étant toujours une question étroitement basée sur les faits, il n'est pas impossible que des organismes compétents arrivent à des conclusions différentes à partir des mêmes faits. Lorsque le ministère de la Justice a examiné l'alliance AA/BA, il est parti de la distinction entre voyageurs d'agrément et voyageurs d'affaires pressés. La question était de savoir si un transporteur en situation de monopole sur une liaison sans escale pouvait avec profit imposer une hausse tarifaire visant une catégorie de passagers identifiables qui ne changeraient pas d'aéroport parce que le vol de correspondance pouvant servir de solution de rechange ne constituait pas un substitut valable pour eux. Dans cette affaire, la preuve était fondée sur les chiffres concernant les passagers entre les Etats-Unis et Londres, des études économétriques, une analyse des politiques des entreprises en matière de voyages ainsi que sur les écarts tarifaires importants entre les deux types de vol. Ces écarts se creusent encore en raison de la négociation directe des tarifs qui est menée de plus en plus souvent avec les acheteurs des entreprises, et qui entraîne une discrimination tarifaire encore plus fine. L'ensemble de la preuve a amené le ministère de la Justice à conclure que les voyageurs sensibles au facteur temps constituaient des marchés distincts.

En ce qui concerne la définition du marché des voyageurs sensibles au facteur temps du point de vue géographique, la preuve a démontré hors de tout doute une préférence pour Heathrow par rapport

à Gatwick. Les passagers ne changeraient pas d'aéroport pour éviter une augmentation de tarif. Cela est vrai même pour certains voyageurs en transit qui ne faisaient que passer par Londres. L'explication est essentiellement d'ordre géographique. En effet, le ministère de la Justice a constaté que Londres était située à 14 miles de Heathrow mais à 25 miles de Gatwick. La durée moyenne du trajet en voiture est de 32 minutes dans le premier cas, et de 64 minutes dans l'autre. De nombreuses entreprises ont ouvert des bureaux au voisinage de Heathrow pour tirer parti des avantages de l'aéroport, le rendant encore plus attrayant pour les voyageurs. L'attractivité de Heathrow a également favorisé une hausse de la fréquentation de l'aéroport. Toutes ces données sont confirmées par des documents des deux compagnies aériennes membres de l'alliance.

Quant aux raisons expliquant les divergences entre la conclusion du ministère de la Justice et la présentation écrite du Royaume-Uni, le délégué convient qu'elles pourraient découler d'une différence entre les passagers américains et britanniques. L'analyse effectuée par les Etats-Unis portait exclusivement sur les paires de villes Etats-Unis/Royaume-Uni, ce qui veut dire que le ministère de la Justice travaillait sur un échantillon contenant une plus forte proportion de passagers américains que dans l'analyse du Royaume-Uni. Les passagers embarqués à Londres pour se rendre sur le continent européen ou vers d'autres destinations ont peut-être des préférences différentes en matière d'aéroports que les passagers américains. Quoiqu'il en soit, le ministère de la Justice a constaté que la définition du marché dans ce cas était plutôt nette. Elle s'appuyait sur des faits et le ministère des Transports des Etats-Unis souscrivait à la définition étroite retenue par le ministère de la Justice.

Un autre délégué **américain**, intervenant cette fois-ci pour le compte du ministère des Transports, apporte une précision concrète n'ayant pas nécessairement d'incidence sur l'analyse de la définition du marché retenue par le Royaume-Uni. Selon les dispositions de l'accord bilatéral, Houston est limité à un service sur Gatwick dans le marché Etats-Unis/Royaume-Uni. Ni British Airways ni American Airlines ne peuvent desservir Heathrow, et tous deux desservent Gatwick.

Avant de clore le débat sur la définition du marché, le Président recommande à l'attention des délégués l'examen détaillé de cette question effectuée par la CE. Il aborde ensuite l'analyse des marchés du transport aérien du point de vue de la concurrence ainsi que de certaines des pratiques qui préoccupent les autorités de la concurrence. La CE est d'avis que l'accès aux créneaux horaires et à la capacité aéroportuaire pourrait constituer un obstacle important au développement d'une nouvelle concurrence. Le Président note également que la contribution du Royaume-Uni explique pourquoi le mécanisme d'attribution des créneaux confère aux compagnies aériennes en place, et en particulier aux opérateurs d'aéroports-pivots, des avantages importants risquant d'avoir une incidence sur la concurrence. Le Président invite ensuite la délégation britannique à développer sa position.

Selon un délégué du **Royaume-Uni**, les avantages ne tiennent pas tant à l'encombrement des aéroports qu'à la façon dont les créneaux sont effectivement attribués et, notamment, à l'influence des droits acquis. Le transporteur national est en général présent depuis plus longtemps sur le marché et s'est approprié une part plus importante de créneaux aux aéroports. La question ne se limite pas à savoir combien de créneaux l'opérateur d'aéroport-pivot détient, mais également combien de créneaux d'heures de pointe. Par exemple, British Airways et ses filiales et concessions à Gatwick possède au total 48 pour cent des créneaux, ce qui constitue une part relativement modeste si l'on se réfère aux normes internationales. Aux heures de pointe de la matinée ou de la soirée, sa part augmente cependant à 62 pour cent. Il est donc vraiment difficile pour les nouveaux entrants de concurrencer l'opérateur d'aéroport-pivot. Autre point qui n'est pas toujours évident, l'opérateur de l'aéroport-pivot, du fait qu'il possède une forte proportion des créneaux, est davantage en mesure de reprogrammer ses vols pour contrer la concurrence. Cet élément a également été relevé dans les contributions de l'Australie [et de l'Italie]. L'opérateur de l'aéroport-pivot peut "prendre en tenailles" les nouveaux entrants en réaménageant sa grille horaire, pour limiter ses nouveaux concurrents à une faible part de marché. Enfin, s'il dispose d'un

important portefeuille de créneaux, il sera beaucoup mieux placé pour en acquérir d'autres, car il pourra mieux utiliser les créneaux des heures creuses. Si par exemple un opérateur assure six rotations vers une ville, il est davantage en mesure de compléter son service avec profit en utilisant des créneaux correspondant à des heures de la journée où le trafic est moins important. En revanche, le nouvel entrant a avant tout besoin de créneaux d'heures de pointe. Etant donné qu'ils sont mieux placés pour utiliser les créneaux des heures creuses, les opérateurs en place ont davantage de possibilités de se les approprier et de les échanger ultérieurement pour des créneaux plus intéressants.

Le **Président** fait remarquer que la contribution de l'Italie examine une affaire où il a été prétendu qu'Alitalia abusait de sa position dominante en exerçant de façon discriminatoire son pouvoir d'attribuer les créneaux de décollage et d'atterrissage. Il invite la délégation italienne à fournir quelques informations de base sur l'attribution des créneaux en Italie et à exposer l'affaire qui a mis en cause Alitalia en 1996.

Un délégué **italien** décrit brièvement le système d'attribution des créneaux en Italie, auparavant et actuellement. Il explique ensuite comment Alitalia a été accusée d'avoir abusé de sa position dominante en exerçant de façon discriminatoire son pouvoir d'attribuer les créneaux de décollage et d'atterrissage. En substance, la compagnie a réagi aux manœuvres de ses concurrents en réaménageant sa propre grille horaire de façon à leur ravir leur clientèle, ce qui a eu pour effet d'évincer de petits nouveaux entrants du marché.

Le Règlement CEE n° 95/93 relatif à l'attribution des créneaux horaires fait explicitement mention du principe selon lequel le coordonnateur des créneaux doit être en mesure d'agir en toute impartialité en qualité de tiers. Cependant, la mise en œuvre du règlement communautaire en Italie était incomplète au moment de l'affaire Alitalia. Etant donné que le rôle de coordonnateur des autorisations pour tous les aéroports nationaux a été attribué à la compagnie, celle-ci s'est trouvée en mesure d'attribuer les créneaux de façon discriminatoire. Les créneaux ont ainsi été attribués au transporteur qui était le premier à les réclamer, et Alitalia pouvait décider qui était ce premier transporteur. L'autorité italienne de la concurrence (l'"*Autorità*") a jugé que dans l'exercice de ses responsabilités en matière de coordination des créneaux, Alitalia avait adopté des stratégies ayant pour but de préserver et de consolider sa propre position sur le marché intérieur en faisant obstacle à l'entrée de nouveaux concurrents. Au cours de l'enquête, Alitalia a cédé son rôle de coordonnateur des autorisations et le ministère des Transports a créé une agence chargée des autorisations pour les aéroports entièrement coordonnés. Actuellement, l'attribution des créneaux relève d'"*Assoclearance*", une association administrée par les exploitants d'aéroports et les transporteurs nationaux.

L'"*Autorità*" a analysé une autre restriction dans l'affaire Alitalia de 1996. S'agissant du chevauchement des heures de départ d'Alitalia et de celles de ses nouveaux concurrents de moindre importance, à savoir Aliadriatica et Meridiana, sur certaines routes, l'enquête a démontré que les deux nouveaux entrants avaient subi un préjudice économique important au point de devoir abandonner certaines de leurs dessertes. Toutes les routes intérieures étaient concernées, en particulier Milan-Rome. L'"*Autorità*" a fait valoir que les petits transporteurs ne disposaient pas de la logistique voulue pour réagir promptement à de telles stratégies offensives en reprogrammant leurs heures d'atterrissage et de décollage. Ces changements leur auraient en outre peut-être occasionné des pertes importantes en termes de dépenses de publicité et de promotion dans les agences de voyage. Enfin, l'"*Autorità*" a jugé que le réaménagement des créneaux d'Alitalia avait valeur de signal, la compagnie faisant ainsi connaître aux nouveaux entrants potentiels sur le marché italien du transport aérien son intention de se défendre.

Un autre facteur qui fait que les nouvelles compagnies éprouvent des difficultés à prendre pied sur le marché ou à étendre leurs activités est l'accès au réseau ramifié d'agents de voyage et aux systèmes informatisés de réservation (SIR). Ainsi, lorsque Aliadriatica a commencé à assurer certaines liaisons entre

des villes du sud de l'Italie et Milan, Alitalia a fait parvenir des avertissements aux agences de voyage afin de leur interdire d'utiliser ses systèmes de billetterie mécanique ou manuelle pour émettre les billets de la compagnie concurrente. Etant donné que les agences de voyage ne possédaient que des billets portant le code d'identification d'Alitalia, les instructions de cette dernière ont empêché Aliadriatica d'étendre son service, ce qui s'est révélé extrêmement nuisible à la fois pour la compagnie et pour ses clients.

L'*Autorità* a conclu qu'Alitalia avait abusé de sa position dominante et, compte tenu de la gravité et de la durée du préjudice causé, elle a condamné la compagnie nationale à une amende de 450 millions de liras (soit un pour cent du chiffre d'affaires). Des amendes plus lourdes étaient exclues en vertu du droit italien de la concurrence, qui prescrit que l'amende, en pareil cas, doit être calculée d'après les recettes réalisées sur les routes affectées par les pratiques restrictives.

Le **Président** présume, bien que cela n'ait pas été dit, que le nouveau système d'attribution des créneaux fonctionne mieux que l'ancien. Il se demande cependant quelles étaient les raisons d'associer les transporteurs à *Assoclearance*. Il soulève ce point en tenant compte des éléments intéressants exposés dans les contributions du Danemark et de la Norvège, qui décrivent leurs systèmes respectifs d'attribution des créneaux. La principale différence entre les deux est qu'en Norvège, les transporteurs possèdent 50 pour cent de l'organisme coordonnateur des créneaux, tandis qu'au Danemark, le coordonnateur est indépendant des compagnies aériennes. Le délégué italien répond que cela s'explique uniquement par la pression exercée par les transporteurs. L'*Autorità* a souligné qu'il était de beaucoup préférable que le coordonnateur de créneaux soit indépendant, mais le ministère des Transports a jugé bon de retenir une solution plus "équilibrée".

Le Président aborde ensuite la contribution du Japon, qui porte également sur la question de l'attribution des créneaux et explique qu'avec la révision de la loi relative à l'aéronautique civile de 1999, un nouveau système d'attribution a été mis en place. Le Président demande au Japon de décrire son nouveau système et d'expliquer comment on peut espérer qu'il favorisera le développement de la concurrence.

Un délégué **japonais** commence par faire remarquer qu'il y a peu de temps encore, trois grandes compagnies aériennes et leurs filiales répondaient aux besoins du Japon en matière de transport aérien. Cependant, deux nouvelles compagnies ont récemment inauguré quatre routes intérieures à la suite de l'accroissement du nombre de créneaux à l'aéroport de Haneda, en 1998 et 1999. Sur ces quatre routes, la concurrence s'est intensifiée. Des coûts d'exploitation bas, attribuables notamment à un service en vol restreint, permettaient aux deux nouveaux entrants d'offrir des tarifs équivalant à la moitié de ceux des trois grandes compagnies en place. Ces dernières ont par la suite réagi en proposant au public les mêmes tarifs réduits, à certaines conditions. On voit donc que l'arrivée de nouveaux concurrents a eu une forte incidence sur les tarifs aériens pratiqués sur les quatre routes concernées.

Le réseau aérien intérieur japonais comprend deux aéroports-pivots : celui de Haneda (Tokyo) et celui d'Itami (Osaka). Il est essentiel pour quiconque envisage de lancer une compagnie aérienne intérieure au Japon d'obtenir des créneaux à ces deux aéroports, ce que la pénurie de créneaux rend difficile.

Le délégué fait remarquer qu'en vertu de l'ancienne loi relative à l'aéronautique civile, l'exploitation d'une compagnie aérienne nécessite une licence du ministère des Transports pour chaque route. L'attribution des licences route par route a toutefois été abolie par un amendement de 1999, qui entrera en vigueur en février 2000. A partir de cette date, les compagnies aériennes décideront elles-mêmes des itinéraires qu'elles desserviront.

Le délégué fait toutefois de nouveau remarquer que les créneaux nécessaires aux nouveaux entrants sont difficiles à obtenir dans les aéroports encombrés. C'est pourquoi il a été décidé qu'en ce qui

concerne les aéroports aux prises avec un problème d'encombrement aigu, qui seront désignés par le ministère des Transports, les créneaux seront réattribués au terme d'une certaine période. La politique de réattribution des créneaux sera fondée notamment sur une évaluation de l'efficacité de la compagnie aérienne concernée. Le ministère des Transports s'emploie actuellement à mettre au point la méthode devant servir à cette évaluation.

Le **Président** enchaîne en demandant si c'est au ministère des Transports qu'incombera l'attribution des créneaux. Le délégué japonais répond par l'affirmative. Le Président fait remarquer que le Comité du droit et de la politique de la concurrence sera vivement intéressé à savoir comment le ministère des Transports ou un autre organisme s'y prendra pour effectuer une évaluation des niveaux d'efficacité des compagnies aériennes.

Indépendamment de la rareté des créneaux, le Président observe que les économies de densité, d'échelle et de gamme dont sont en mesure de bénéficier les grands transporteurs, en particulier ceux qui exploitent des réseaux en étoile, peuvent constituer un autre obstacle de taille à l'entrée dans le secteur, cet obstacle pouvant être en outre renforcé par les fusions et les alliances. Il ajoute, s'agissant en particulier des exploitants d'aéroports-pivots, que selon certaines contributions écrites à la table ronde, les économies d'échelle et de gamme non seulement créent des obstacles à l'entrée mais peuvent également en créer à la sortie. Le Président signale que la Pologne a examiné cette question et est allée plus loin en soutenant que les exploitants de liaisons point à point ne seront peut-être pas capables de rivaliser avec les exploitants de réseaux en étoile, même s'ils jouissent d'un avantage au plan de l'efficacité. Le Président demande à la Pologne de développer son point de vue.

Une déléguée **polonaise** explique que la concurrence entre opérateurs ne peut se comparer qu'entre des destinations sur lesquelles différents opérateurs fournissent des services aériens, par exemple entre Varsovie et New York. Ainsi, LOT (la principale compagnie polonaise) peut être présente sur cet itinéraire en offrant des vols sans escale à des tarifs qui sont bas mais économiquement viables, c'est-à-dire qui ne contreviennent pas aux règles antidumping. LOT offre également un programme pour grands voyageurs et bénéficie d'un meilleur positionnement sur les écrans de SIR car ce sont les vols sans escale qui y sont affichés les premiers. Ces vols recueillent habituellement environ 90 pour cent de la clientèle car ils offrent plus de commodité aux passagers. Dans le cas des vols avec correspondance, offerts par les opérateurs de réseaux en étoile, les passagers doivent d'abord être amenés à l'aéroport-pivot, à partir duquel ils seront ensuite acheminés vers leur destination. Ces vols durent plus longtemps que les vols directs et ont également pour inconvénient d'imposer aux usagers des temps d'attente et de correspondance. En outre, les opérateurs de réseaux en étoile doivent assumer des coûts supplémentaires liés au transfert des passagers et des bagages. Ces coûts supplémentaires devraient, selon la déléguée, se traduire par des tarifs plus élevés. Cependant, la déléguée est d'avis que les opérateurs de réseaux en étoile faisaient du dumping pour attirer la clientèle, concédant en même temps que pareille pratique était très difficile à prouver.

La situation semble différente lorsque les passagers doivent changer d'avion à l'aéroport-pivot. Il est alors très difficile pour une combinaison de services point à point de concurrencer les exploitants d'aéroports-pivots car les passagers en transit choisissent en général un opérateur capable de leur offrir un service complet de bout en bout. En revanche, la concurrence entre les opérateurs point à point et les opérateurs de réseaux en étoile sur des itinéraires identiques est très vive. Théoriquement, les deux types d'opérateurs ont des chances égales d'attirer du trafic, puisqu'ils occupent la même position dans les SIR et offrent des vols de durée comparable. Les opérateurs de réseaux en étoile misent alors notamment sur des tarifs plus bas, leurs programmes pour grands voyageurs, un meilleur service de cabine et la ponctualité pour concurrencer les liaisons directes. Ils renforcent en outre souvent leur avantage concurrentiel par des pratiques déloyales : prix de dumping ou d'éviction, dumping de capacité. Les opérateurs plus efficaces mais plus petits sont alors confrontés au risque d'être graduellement évincés du marché.

La déléguée récapitule son intervention en faisant valoir que les réseaux point à point sont plus pratiques pour les passagers, mais que les réseaux en étoile sont plus rentables pour les opérateurs. Cependant, ce ne sont pas tous les opérateurs de réseaux en étoile qui sont capables de soutenir la concurrence d'autres opérateurs de la même catégorie, à en juger par le fait que certaines compagnies aériennes européennes ont réclamé des subsides de l'Etat pour maintenir leur présence sur le marché. Sur le marché actuel, les transporteurs aériens doivent coopérer étroitement, comme en témoignent les fusions et alliances qui se forment actuellement. Il en va de même pour LOT, qui coopère avec d'autres transporteurs dans différents domaines afin d'améliorer sa position concurrentielle.

Le **Président** donne de nouveau la parole au Royaume-Uni, en faisant remarquer cette fois que son document examine de façon assez approfondie la question des barrières, mais en soulignant comment les opérateurs n'exploitant pas d'aéroport-pivot peuvent les franchir.

Selon un délégué du **Royaume-Uni**, trois stratégies ont été mises en œuvre par ces opérateurs au Royaume-Uni pour concurrencer les exploitants d'aéroports-pivots. Premièrement, ils ont tenté de mettre sur pied des réseaux concurrents, ou virtuels. Deuxièmement, ils ont introduit des services complémentaires de ceux offerts par les opérateurs d'aéroports-pivots. Troisièmement, ils ont différencié leurs services pour éviter une concurrence frontale avec ces derniers.

S'agissant de la première stratégie, un opérateur d'aéroport-pivot est avantagé parce que les clients préfèrent en général un service intégré, c'est-à-dire un service avec la même compagnie, à un service intercompagnies. Les autres compagnies peuvent cependant créer un réseau virtuel en concluant une série d'accords intercompagnies. Au Royaume-Uni par exemple, British Midlands a signé une série d'accords non exclusifs de partage de codes avec pratiquement toutes les compagnies aériennes américaines. Elle est ainsi en mesure d'assurer des services intercompagnies vers une grande partie du territoire des Etats-Unis et de fait vers le reste du monde. Cette compagnie a également été capable de créer pratiquement un réseau virtuel en concluant des accords de programmes de fidélisation avec d'autres compagnies aériennes.

La seconde stratégie, moins offensive, consiste à tenter de s'intégrer aussi étroitement que possible à l'opérateur du réseau, par exemple en ajoutant une radiale à un réseau en étoile existant. La compagnie offrant la desserte complémentaire serait désavantagée en ce qui concerne l'obtention de trafic passagers de rabattement sur cet itinéraire, mais ce problème pourrait en partie être résolu par un accord de partage de codes avec l'opérateur d'aéroport-pivot. Si l'on prend un exemple extrême, une compagnie pourrait également avoir un accord de concession avec l'opérateur d'aéroport-pivot. De toute évidence, la prestation de services complémentaires selon ces modalités ne favorise pas le même degré de concurrence efficace que l'établissement d'un réseau concurrent. Le délégué ajoute qu'une autre façon d'ajouter un service complémentaire consiste à offrir un autre vol, commode pour les usagers, pendant les heures de pointe. L'entrant est ainsi en mesure de surmonter les problèmes liés à l'insuffisance de trafic de rabattement. Par exemple, en offrant un vol à l'arrivée ou au départ qui coïncide avec une vague de passagers en correspondance, une petite compagnie pourrait attirer une partie de cette clientèle en lui offrant des délais d'attente plus courts que l'opérateur de l'aéroport-pivot.

Enfin, les compagnies peuvent concurrencer les opérateurs d'aéroports-pivots en élaborant une stratégie complètement distincte, afin de différencier leurs produits. Au lieu de se concentrer sur les passagers en correspondance, une compagnie pourrait privilégier le trafic point à point. Au Royaume-Uni, deux grandes stratégies sont mises à l'essai à cet égard. L'une est suivie par les transporteurs à tarif réduit qui visent les routes entre la Grande-Bretagne et l'Europe continentale, où ils peuvent compter sur un trafic passagers point à point raisonnablement important (essentiellement les liaisons reliant Londres aux capitales européennes). Ces transporteurs visent souvent les voyageurs d'agrément. Comme ils remplissent

leurs avions de passagers se rendant d'un point à un autre, ils ne sont pas tributaires du trafic de rabattement. L'autre stratégie, celle suivie par Virgin, est centrée sur le trafic point à point mais en se concentrant sur les routes à forte fréquentation de voyageurs d'affaires et d'agrément.

Le **Président** ouvre alors le débat général.

Le premier intervenant est un délégué **canadien** qui parle d'une fusion en cours au Canada. Le 13 août 1999, un décret a fixé une période de 90 jours pour permettre aux deux grandes compagnies aériennes (Lignes aériennes Canadien International et Air Canada) ainsi qu'aux autres parties intéressées d'échanger leurs vues et d'élaborer divers arrangements, y compris d'éventuelles fusions, sans risquer de contrevenir aux dispositions du droit de la concurrence.

Au moment où a lieu la table ronde, le Ministre des Transports a indiqué que si un accord de fusion conditionnelle est proposé avant l'expiration de la période fixée de 90 jours, il déterminera si l'accord est conforme à l'intérêt général ou s'il devra être modifié pour le devenir. Le Ministre a déclaré qu'il évaluerait tout accord proposé, tant du point de vue des transports que de celui de la politique de la concurrence, afin d'assurer la viabilité à long terme du secteur du transport aérien et de préserver les avantages que la concurrence offre aux consommateurs. Il a également indiqué que le Bureau de la concurrence serait consulté sur les conditions à respecter pour parvenir à un résultat aussi favorable à la concurrence que possible, et que les vues du Bureau seraient prises en compte avant que ne soit prise une quelconque décision.

Dans une lettre du 30 août 1999, le Ministre des Transports a demandé au Commissaire de la concurrence son avis sur l'action à mener ou les conditions à réunir pour tenir compte des préoccupations relatives à la concurrence soulevées par une restructuration du secteur. Depuis, le Bureau de la concurrence a entrepris une vaste analyse de la concurrence dans le secteur du transport aérien au Canada. Le Ministre doit rendre cette analyse publique d'ici à la mi-novembre.

Onex Corporation a annoncé le 24 août un plan d'acquisition à la fois d'Air Canada et des Lignes aériennes Canadien International. Dans son plan, Onex a fixé notamment comme condition qu'il n'y ait pas d'examen de fusion par le Bureau de la concurrence. Un vote des actionnaires est prévu pour le 8 novembre, soit juste avant l'expiration du délai de suspension de l'application du droit de la concurrence. D'autres offres ont également été avancées. Dans l'intervalle, Air Canada a engagé une procédure pour tenter de faire annuler le décret. En outre, des questions ont été soulevées quant à l'effet du décret et, en particulier, quant à savoir s'il écartait l'examen, prévu dans le cadre du droit de la concurrence, de tout projet de fusion des deux compagnies aériennes.

Un délégué **brésilien** indique que le Sénat de son pays a demandé à l'autorité de la concurrence de donner son avis sur un projet de concentration du secteur du transport aérien au Brésil, la banque nationale de développement faisant actuellement campagne en faveur de la fusion des quatre plus grandes compagnies aériennes brésiliennes. Le délégué fait remarquer que lorsque l'avis sera donné, probablement quelques semaines après la table ronde, il sera rendu public et transmis au Comité.

Le Brésil s'est vivement intéressé au séminaire tenu le printemps dernier au Mexique. Le délégué a également lu avec grand intérêt les diverses contributions à la présente table ronde, notamment la note du Secrétariat, qui pose des questions revêtant une grande utilité pour l'autorité brésilienne de la concurrence. Deux de ces questions notamment sont d'actualité pour le Brésil. La première concerne l'ordonnancement approprié de la concentration du secteur et la création d'un nouveau cadre de réglementation. L'autorité de la concurrence continue de souligner la nécessité de créer un nouveau cadre réglementaire, associé à un organisme de réglementation indépendant, avant que ne s'engage le regroupement. La deuxième question concerne les coûts et les avantages des fusions d'entreprises nationales, par rapport à leur participation à

différentes alliances internationales. Dans une optique de concurrence, les alliances internationales multiples semblent préférables.

Les expériences du Mexique, du Royaume-Uni, des Etats-Unis, du Canada et de l'Italie revêtent un grand intérêt pour le Brésil. C'est pourquoi l'autorité de la concurrence a pris l'initiative de tenir un séminaire, probablement le 25 novembre, auquel les délégués du Comité sont invités. Le délégué brésilien sollicite l'aide du Comité pour ce séminaire, qui devrait permettre aux différents pays d'échanger des renseignements d'importance primordiale sur leur expérience dans le secteur du transport aérien. Tous les pays de l'OCDE sont les bienvenus à ce séminaire, à commencer par les cinq déjà cités.

Une déléguée **espagnole** souhaite savoir si, dans le cadre de l'analyse du marché et de la distinction entre passagers sensibles au facteur temps et voyageurs d'agrément, il convient de supposer que tous les voyageurs d'agrément prennent des vols réguliers. La déléguée pense que de nombreux voyageurs d'agrément prennent des vols affrétés. L'été, en Espagne, sur certains itinéraires, c'est ce que choisissent 90 pour cent des voyageurs. Peut-être conviendrait-il de considérer ce type de vols comme un marché distinct.

Un représentant du **BIAC**, qui travaille chez Virgin Atlantic Airways Ltd., intervient pour commenter un certain nombre de questions ayant trait au principe selon lequel les dossiers de concurrence devraient être traités dans le secteur de l'aviation de la même façon que dans les autres secteurs d'activité. Comme l'a mentionné le délégué australien, les alliances entre compagnies aériennes se nouent en raison des règles de participation et de contrôle définies dans la Convention de Chicago. Ces règles empêchent en général des fusions en bonne et due forme. A son avis, elles sont archaïques et devraient être modifiées – il existe sans aucun doute une demande en ce sens. Tant que cela ne sera pas fait, la réglementation de l'aviation par les autorités de la concurrence risquera toujours d'être influencée par les intérêts politiques nationaux. Il est nécessaire d'assurer la convergence de la réglementation de la concurrence au plan mondial. Le délégué soutient que les autorités de la concurrence devaient examiner les questions concernant l'aviation de la même façon que celles des autres secteurs d'activité, et que dans la mesure du possible, c'est aux organismes normalement chargés des questions de concurrence qu'il appartient d'élaborer et d'appliquer cette réglementation.

Le délégué prend note de l'expérience de l'UE, qui tend à démontrer que les marchés devraient être définis en termes de paires de villes et, dans certains cas, de paires d'aéroports, la géographie constituant un élément déterminant à cet égard. Le délégué australien mentionne qu'en ce qui concerne le service entre son pays et l'Europe, les acheminements indirects peuvent être de très bons substituts d'un service direct, mais que tel n'est pas le cas sur le marché transatlantique entre le Royaume-Uni et les Etats-Unis. En 1996, par exemple, seulement deux pour cent des passagers voyageant entre Londres et les Etats-Unis ont transité par les aéroports-pivots de l'Europe continentale. D'après des données sur les tarifs non publiés, Virgin estime que les passagers sensibles au facteur temps qui voyagent entre Londres et New York évaluent leur temps à environ 240 dollars l'heure, d'où le peu d'intérêt qu'ils ont à utiliser les services indirects via des aéroports-pivots. Le système d'aéroports-pivots dominés par des alliances peut avoir son utilité pour certains clients mais pas tous. Le délégué partage l'avis de son collègue le représentant du BIAC, selon lequel les services intercompagnies peuvent offrir bon nombre des avantages que l'on attribue aux alliances.

S'agissant de la concentration des créneaux, le délégué émet l'observation faite par son collègue britannique au sujet de la part importante que British Airways détient à l'aéroport de Londres Gatwick. Il fait ainsi remarquer qu'à 17 heures, les lundis de pointe, British Airways détient effectivement 77 pour cent des créneaux, et que par conséquent la concentration d'un élément d'infrastructure rare pose en fait un très grave problème. Il mentionne qu'il y a plusieurs façons possibles d'aborder la question de

l'attribution des créneaux et que l'on peut envisager par exemple la location dans le cadre de concessions de durée limitée.

S'agissant des effets anti-concurrentiels des programmes de fidélisation, le délégué fait sienne l'opinion de la CE selon laquelle ces programmes peuvent avoir un effet anticoncurrentiel dans n'importe quel secteur d'activité, notant en outre que des questions telles que la domination d'infrastructures rares et les pratiques d'éviction sont également communes à l'aviation et aux autres secteurs. Le délégué conclut ensuite son intervention en faisant valoir que si l'aviation faisait l'objet d'un traitement symétrique par rapport aux autres secteurs, les fusions seraient certainement plus nombreuses, et peut-être aussi les alliances. En revanche, la concurrence pourrait davantage se développer dans les différents créneaux du marché, et les transporteurs à tarif réduit, tels que les opérateurs de vols affrétés auxquels a fait allusion la déléguée espagnole, disposeraient de meilleurs débouchés.

Le **Président** fait remarquer qu'en 25 ans d'activités liées à l'application du droit de la concurrence, c'est la première fois qu'il entend un représentant du monde des affaires affirmer que le droit de la concurrence devrait être appliqué dans son secteur d'activité de la même façon que dans n'importe quel autre.

Un délégué **italien** prend ensuite la parole. Ayant participé au séminaire tenu au Mexique sur la concurrence entre les compagnies aériennes, il souhaite insister sur l'importance de la concurrence sur le marché. La concurrence potentielle, en dépit des articles théoriques parus auparavant sur le sujet, n'est pas très efficace dans l'industrie du transport aérien. Cela tient au fait que les compagnies aériennes en place ont la possibilité d'égaliser l'offre des nouveaux entrants en matière de prix et de capacité. C'est souvent ce qui s'est produit en Italie. Toutes les poursuites pour abus de position dominante intentées contre Alitalia concernaient une situation où le transporteur en place signalait son intention de répliquer aux nouveaux entrants, ce qui montre que la concurrence potentielle n'est pas très efficace. S'agissant de l'effet de la libéralisation au sein de l'UE, même si le cabotage est maintenant autorisé depuis deux ans, les nouveaux entrants sont rares sur le marché des vols réguliers. La réglementation du secteur rend difficile l'accès de nombreux nouveaux entrants. Les pays d'Europe conservent des accords bilatéraux avec les pays tiers qui limitent l'entrée des transporteurs étrangers. Ces derniers ne sont pas autorisés à desservir des destinations de pays tiers. Le délégué dit espérer que ce système disparaîtra et qu'un marché unique du transport aérien se formera en Europe.

Le délégué rappelle également à ses collègues le débat qui s'est déroulé en 1997 lors de la table ronde du Groupe de travail 2 sur les aéroports, au cours duquel a été abordée la question de la coordination des créneaux, et qui a révélé que la compagnie occupant une position dominante dans la plupart des pays était le coordonnateur des autorisations. Fait intéressant à signaler, les coordonnateurs de créneaux font en général preuve d'un comportement favorable à la concurrence. Cela s'explique par le fait qu'il existait à l'origine une seule compagnie aérienne dans chaque pays et que si le coordonnateur des autorisations adoptait l'attitude appropriée, il pouvait s'attendre que ses homologues étrangers fassent de même en retour. Une fois que la concurrence s'est développée, ce système a été fragilisé et les coordonnateurs sont devenus en général des agents très restrictifs. Le délégué est d'avis que l'ensemble de la structure institutionnelle devrait évoluer dans un sens plus favorable à la concurrence, pour se démarquer nettement de la structure actuelle.

Le **Président** donne alors la parole à un délégué mexicain, qui commence par faire sienne l'opinion du représentant du BIAC, selon laquelle les compagnies aériennes devraient, du point de vue de la politique de la concurrence, être traitées de la même façon que les entreprises de n'importe quel autre secteur d'activité. Malheureusement, les gouvernements ne sont pas de cet avis. Dans de nombreux pays, les autorités réglementaires protègent de plus en plus le secteur du transport aérien. Le délégué est troublé d'apprendre qu'au Canada comme au Brésil, le gouvernement envisage de fusionner les compagnies

aériennes nationales pour en faire un transporteur unique. Au Mexique, l'agence de la concurrence fait face à de fortes pressions en ce sens. Ce problème dépasse le cadre de l'attribution des créneaux ou de la définition du marché. Selon le délégué, dans l'optique de la libéralisation, et notamment de l'ouverture du secteur à la concurrence internationale, les compagnies aériennes devraient être traitées comme le sont les entreprises des autres secteurs tels que les télécommunications, l'électricité et les chemins de fer. Il exhorte les autorités de la concurrence à militer en ce sens.

Un délégué **finlandais** souligne l'importance primordiale qu'il convient d'accorder à une définition appropriée du marché. Il se montre également intéressé à en apprendre davantage sur la façon dont les autres autorités de la concurrence appliquent les techniques économétriques au transport aérien, en utilisant l'abondante quantité de données sur l'élasticité-prix de la demande qui existe selon lui dans ce secteur.

Après quelques observations d'ordre général, qui sont regroupées à la fin de la présente note, le Président passe au sujet suivant, à savoir les effets des divers programmes de fidélisation, c'est-à-dire les programmes pour grands voyageurs et les programmes de super-commission des agents de voyage. Il fait remarquer que le document présenté par les Etats-Unis tend à démontrer que les programmes de fidélisation de la clientèle des opérateurs d'aéroports-pivots, du fait qu'ils sont plus généreux, sont de nature à inciter les passagers à privilégier ces types de transporteur. Néanmoins, selon le même document, "on ne sait pas vraiment si la suppression des programmes de fidélisation aurait en soi pour effet de stimuler sensiblement la concurrence sur les radiales". Le Président fait également remarquer que, selon la contribution du Royaume-Uni également, les programmes de fidélisation ne constituent pas un sujet de préoccupation particulière, compte tenu surtout du fait que de nombreuses compagnies obligent leurs cadres à choisir des compagnies aériennes plus économiques. L'opinion selon laquelle les programmes de fidélisation ne posent que quelques difficultés secondaires semble être contraire à celle de la CE et de plusieurs autres organismes européens chargés des questions de concurrence. Le Président invite les Etats-Unis à expliquer leur position à l'égard des programmes de fidélisation.

Selon un délégué des **Etats-Unis**, ces programmes sont susceptibles d'élever des barrières à l'entrée, en particulier aux aéroports-pivots dominés par une seule compagnie. L'importance de leurs effets dépendra des facteurs considérés. Les Etats-Unis ne partagent pas l'opinion de certains autres pays selon laquelle ces programmes sont en soi mauvais et doivent être abolis.

Le Président note que la CE, dans le document qu'elle a présenté, évoque "la nécessité éventuelle, dans le cadre des mesures visant à remédier au problème posé par une position dominante, d'accorder l'accès au programme de fidélisation d'une compagnie en place, de façon à favoriser l'efficacité des nouveaux entrants ou l'expansion des concurrents déjà présents sur le marché". Il demande à la CE de développer son opinion ainsi que les raisons qui expliquent ses divergences de vues avec les Etats-Unis.

Un délégué de la **Commission européenne** commence par faire remarquer que les vues de la CE et des Etats-Unis ne divergent en fait pas beaucoup. Jamais les programmes de fidélisation n'ont été examinés isolément. La question a plutôt été soulevée dans le cadre des trains de mesures visant à faciliter l'entrée sur les routes où une fusion ou une alliance aboutissait ou risquait d'aboutir à une position dominante. Le point de départ pour y remédier est le transfert de créneaux, qui seront utilisés par les nouveaux entrants sur les itinéraires en jeu, mais d'autres questions sont à prendre en compte en ce qui concerne l'entrée, telles que la facilité d'accès aux agences de voyages, aux SIR et aux installations et services aéroportuaires. L'accès au trafic passagers et en particulier à la clientèle d'affaires, plus rentable, est très important. C'est pourquoi la CE a exigé dans les affaires récentes que les compagnies en place réduisent, tout au moins temporairement, la fréquence de leur service de façon à libérer un espace pour les nouveaux entrants susceptibles de se présenter.

La CE estime que les programmes de fidélisation constituent un outil de commercialisation important pour attirer la clientèle d'affaires. De toute évidence, le programme d'un transporteur dominant à un aéroport-pivot est intéressant, parce que l'envergure du réseau permet aux voyageurs d'affaires d'accumuler davantage de points et de les faire valoir sur un éventail plus large de destinations. En outre, étant donné que le voyageur d'affaires ne paie habituellement pas son billet mais bénéficie en revanche personnellement du programme de fidélisation, il serait difficile pour un nouvel entrant n'offrant pas un tel programme ou un réseau aussi développé à l'aéroport-pivot d'attirer cette catégorie de client en pratiquant des tarifs plus bas. C'est pourquoi la CE a exigé des compagnies dominantes l'engagement de donner aux nouveaux entrants la possibilité, à leur demande, de participer à leur programme de fidélisation.

Le **Président** mentionne les diverses contributions qui abondent dans le sens de l'opinion de la CE sur les programmes de fidélisation. La délégation australienne, par exemple, semble d'avis que ces programmes constituent un obstacle de taille au développement des petites compagnies aériennes. De son côté, la Norvège estime que les programmes de fidélisation des compagnies dominantes aux différents aéroports devraient être "réduits ou abolis". Le Danemark, quant à lui, fait remarquer que ses trois principaux transporteurs participent au programme de fidélisation de SAS (Scandinavian Airlines Systems). Cependant, il estime que l'absence de programmes de ce type améliorerait à la fois la transparence et la concurrence par les prix, et rappelle que le Conseil danois de la concurrence est en train d'examiner l'ampleur et l'utilisation des programmes de fidélisation. Le Président s'interroge sur le bien-fondé de cette enquête, compte tenu du fait que les trois transporteurs participent au même programme de fidélisation, et il demande si ces derniers se livrent une concurrence par les prix.

Un délégué **danois** répond que le Conseil de la concurrence en est seulement au stade d'envisager cette enquête. Il ajoute que la situation dans son pays est compliquée par le fait que la construction d'un nouveau pont a entraîné une diminution sensible du trafic passagers intérieur. Quoi qu'il en soit, si le Danemark envisage cette enquête, c'est parce qu'il n'y a eu aucune nouvelle entrée sur le marché intérieur, ce qui tient peut-être, estime-t-on, aux liens entre ce marché et le marché international. Les deux transporteurs régionaux en place sont associés à SAS. Certains sont d'avis qu'un transporteur régional supplémentaire lié à une alliance différente pourrait contribuer à stimuler la concurrence intérieure et internationale.

Le **Président** aborde ensuite une autre importante préoccupation, à savoir la pratique de prix d'éviction. Selon la contribution de l'Australie, "la pratique de prix d'éviction est difficile à prouver dans le contexte du transport aérien, car le coût marginal du transport d'un passager supplémentaire est minimal". En revanche, les Etats-Unis, dans le document qu'ils ont présenté, expliquent qu'en mai 1999, le ministère de la Justice a engagé une procédure contre American Airlines pour avoir pratiqué des prix d'éviction en réponse à l'entrée de transporteurs à tarif réduit à son aéroport-pivot de Dallas/Fort Worth. Le Président demande un complément d'information sur cette affaire.

Un délégué des **Etats-Unis** rappelle à ses collègues que la veille, Joel Klein a parlé de la volonté du ministère de la Justice d'intenter davantage de poursuites afin de créer une jurisprudence permettant de clarifier un certain nombre d'aspects complexes, notamment en ce qui concerne les pratiques prédatrices. Dans la procédure engagée contre American Airlines en mai 1999, le ministère de la Justice a allégué la monopolisation ou la tentative de monopolisation par American Airlines à l'aéroport de Dallas/Fort Worth (le troisième des Etats-Unis au plan de la fréquentation), qui constitue l'aéroport-pivot le plus important et le plus rentable de la compagnie. Celle-ci détient en effet environ 70 pour cent de l'ensemble du trafic sans escale qui y est associé. N'ayant guère à affronter de concurrence sur bon nombre de ses routes radiales, elle est en mesure de pratiquer des tarifs de monopole. Dans sa plainte, le ministère de la Justice accuse American Airlines de chercher systématiquement à chasser les transporteurs à tarif réduit de Dallas/Fort Worth en saturant de vols supplémentaires les itinéraires qu'ils desservent, en réduisant ses tarifs, pour récupérer par la suite ses pertes en haussant de nouveau ses tarifs et en réduisant le service une fois qu'elle

s'est débarrassée d'un nouvel entrant. Le ministère de la Justice prétend que la compagnie a adopté ce comportement à plusieurs reprises sur diverses radiales au départ de Dallas/Fort Worth, à l'égard de trois transporteurs à tarif réduit. Chaque fois qu'un nouveau transporteur arrivait sur le marché, les tarifs diminuaient et le trafic augmentait. Dans chaque cas, American Airlines a répliqué à la fois en augmentant sa fréquence de vols et en baissant ses tarifs jusqu'à ce que l'entrant soit évincé ou réduise très sensiblement ses activités. Le ministère de la Justice estime être en mesure de démontrer qu'American Airlines a accru sa capacité et réduit ses tarifs largement plus que ce qu'exigeait les principes de gestion commerciale, à seule fin de chasser le nouveau concurrent. Le coût des nouveaux vols dépassait les recettes qu'ils engendraient, et la compagnie avait l'intention de récupérer ses pertes ultérieurement.

Quant aux éléments de preuve mentionnés dans la plainte, ils comprennent d'abord certaines déclarations du PDG d'American Airlines, notamment une de 1976 : "... si ce n'est pas pour les chasser [les transporteurs à tarif réduit], je ne vois pas pourquoi nous réduirions nos profits." Un certain nombre de déclarations de ce genre révèlent des intentions prédatrices. Ensuite, il y a des raisons de penser qu'American Airlines a délibérément dérogé à ses propres normes selon lesquelles elle évalue la rentabilité des routes et définit sa réaction à l'entrée des transporteurs à tarif réduit. D'après des documents de la compagnie, celle-ci a agi ainsi au motif que "le coût ou l'impact qu'aura à court terme sur les recettes une stratégie à l'égard d'un transporteur à tarif réduit peut être considéré comme l'investissement nécessaire pour obtenir l'effet souhaité au plan de la part de marché." Pareil raisonnement témoigne d'une intention précise de monopoliser le marché. Intervient enfin dans la preuve la question des coûts, qui représente peut-être quelque chose de nouveau en matière de pratique prédatrice. En effet, American Airlines a non seulement réduit ses tarifs, mais aussi accru sa capacité. Le ministère de la Justice prétend que la compagnie a non seulement absorbé des coûts de main-d'œuvre, de carburant et de commercialisation, mais aussi des coûts d'opportunité liés à la possession et à l'exploitation d'avions retirés d'autres routes pour être réaffectés sur les itinéraires desservis par les transporteurs à tarif réduit. La compagnie n'aurait pas eu à assumer ces coûts si elle n'avait pas réaffecté sa capacité. Le ministère de la Justice faisait également observer dans sa plainte :

- que les recettes d'American Airlines, sur chaque route et sur au moins l'un de ses vols supplémentaires, étaient inférieures aux coûts variables du vol ;
- que sur chaque route, par suite de l'accroissement de sa capacité, les recettes totales réalisées par American Airlines sur l'itinéraire en question tombaient en-deçà des coûts totaux d'exploitation et que l'accroissement de la capacité a fait diminuer les profits de la compagnie ; et
- que sur chaque route, les opérations d'American Airlines n'étaient pas rentables, selon les propres critères de rentabilité des routes de la compagnie, après augmentation de la capacité, et que cette augmentation a rendu les activités de la compagnie encore moins rentables.

L'aspect qui est probablement le plus intéressant, mais aussi le plus controversé de cette affaire, a été la décision de fonder l'analyse des coûts sur le coût d'opportunité intégral plutôt que sur la notion plus traditionnelle de coût marginal.

Le délégué conclut son intervention en faisant remarquer qu'American Airlines s'inscrit bien sûr en faux avec cette version des faits et avec la méthodologie du ministère de la Justice. La compagnie a également créé un site Web dans lequel elle conteste bon nombre des allégations du ministère.

Le **Président** fait valoir que le ministère semble fonder son dossier, d'une part, sur l'intention d'exclure les nouveaux entrants et, d'autre part, sur un examen des coûts d'opportunité d'American

Airlines. S'agissant de l'intention, le délégué a cité un certain nombre d'observations incriminantes, auxquelles le Président réagit toutefois avec un certain scepticisme. Il rappelle en effet que le Conseil de la concurrence, en France, a utilisé le même genre d'éléments dans une action pour abus de position dominante. L'un des commissaires, issu du secteur privé, avait déclaré qu'il se levait chaque matin en tentant de trouver un moyen de se débarrasser de ses concurrents et que s'il n'avait pas agi ainsi il aurait été remercié il y a longtemps. Par conséquent, quelle est la force probante d'une telle déclaration ?

Le Président note que la prestation de services de transport aérien exige un certain nombre de services complémentaires tels que les services terminaux, les services d'escale, les services informatiques et les services d'agents de voyages. La concurrence entre compagnies aériennes dépend en partie des conditions de concurrence qui prévalent dans ces services et du fait qu'il y ait ou non intégration verticale entre une compagnie aérienne et les prestataires de ces types de services. Aux Etats-Unis, par exemple, la relation entre les compagnies aériennes et les SIR (intégration verticale) a fait l'objet d'un contentieux. Celle qui existe entre les exploitants d'aéroports et certaines compagnies aériennes pose un problème analogue. Dans sa contribution, la République tchèque décrit l'enquête pour discrimination concernant la prestation des services d'escale par les aéroports. Dans la sienne, la CE fait également état de préoccupations quant aux redevances des services d'escale et à la qualité de ces services, dont la libéralisation n'a peut-être pas été poussée assez loin. Le Président demande à la CE d'expliquer la relation qui existe entre l'insuffisance présumée de concurrence dans les redevances des services d'escale et la concurrence entre les compagnies aériennes.

Un délégué de la **Commission européenne** explique que les compagnies aériennes et les aéroports sont souvent encore des entreprises publiques entretenant des relations très étroites avec les autorités nationales de l'aviation et les transporteurs nationaux. Même si la libéralisation a donné lieu à de nombreux changements, personne ne saurait s'étonner que lorsque les autorités ou les aéroports doivent prendre des décisions influant sur la concurrence, ils aient tendance à assimiler l'intérêt général à celui des transporteurs nationaux. Le délégué illustre son propos par plusieurs exemples d'intervention de l'UE dans ce domaine. Il existe toute une série d'affaires concernant la perception de droits d'atterrissage discriminatoires dans différents aéroports. La plus connue est celle impliquant l'autorité aéroportuaire de Bruxelles, qui a mis sur pied un système de remises sur les redevances d'atterrissage, lesquelles ont été en fait refusées à tous les transporteurs sauf à l'ancien transporteur national.

Il peut également y avoir traitement discriminatoire en ce qui concerne la qualité du service fourni. Une décision a été ainsi rendue en 1996 contre Aéroports de Paris (ADP) pour avoir accordé au groupe Air France l'utilisation exclusive d'une aérogare plus moderne. La CE a veillé à obtenir d'ADP des garanties que l'aérogare serait ouverte à d'autres transporteurs.

Le délégué mentionne également une affaire intéressante de 1998 concernant la répartition discriminatoire du trafic entre les aéroports en Italie. Après avoir reçu les plaintes de neuf transporteurs européens, la CE a interdit au gouvernement italien de mettre en application un décret transférant la totalité du trafic de l'aéroport Milan-Linate vers celui de Milan-Malpensa, sauf les vols Rome-Milan. La CE a jugé ce décret à la fois discriminatoire et exagéré. Elle a constaté qu'Alitalia pouvait alimenter en trafic passagers son aéroport-pivot de Rome à partir de Milan-Linate pour desservir d'autres routes, mais que d'autres transporteurs ne seraient pas en mesure de faire de même à partir de Milan-Malpensa vers d'autres aéroports-pivots car les liaisons routières et ferroviaires entre le centre de Milan et Malpensa étaient insuffisantes pour absorber le volume de passagers.

L'UE a publié une directive libéralisant les services d'escale et a engagé une action contre l'administration de l'aéroport de Francfort pour les contrats à long terme qu'elle avait conclus avec ses meilleurs clients. Une affaire a aussi impliqué une fois de plus ADP, pour avoir perçu des redevances discriminatoires de services d'escale. Enfin, il convient de citer une affaire concernant la différence de

qualité des services d'escale fournis par Olympic Airways à l'aéroport d'Athènes. La CE a exigé du gouvernement grec qu'il prenne un certain nombre de mesures pour remédier à la situation.

Le **Président** aborde ensuite la question de savoir comment les fusions et les alliances pourraient accroître la concentration, et ainsi renforcer la coordination anticoncurrentielle des compagnies aériennes. Une procédure engagée en 1992 contre huit grandes compagnies aériennes américaines et leur service commun de diffusion des tarifs, Airline Tariff Publishing Co. (ATP) en a fourni un bon exemple.

Un délégué des **Etats-Unis** explique qu'ATP fournit essentiellement une base de données informatisée pour les tarifs de toutes les compagnies aériennes. Quotidiennement, les compagnies transmettent à ATP tous leurs tarifs, y compris les tarifs futurs et les tarifs réduits. L'information est stockée en mémoire et transmise aux divers SIR. La procédure engagée par le ministère de la Justice comporte deux volets. Le premier volet concerne l'illégalité *per se* d'une cinquantaine d'accords de hausse de tarifs essentiellement négociés dans le cadre de la communication assurée par l'entremise de la base de données elle-même. Cette façon de parvenir à une entente sur les prix n'est en soi pas différente d'une entente fondée sur la communication directe. Le second volet de la procédure implique une règle de raison facilitant la transposition de la théorie dans la réalité. Le ministère de la Justice se fonde en cela sur le fait qu'ATP a servi à faciliter un échange d'informations sur les intentions de prix futurs, y compris les réactions à certains tarifs réduits. Le système reposait sur un système de codes complexes -- une longue suite alphanumérique comportant un grand nombre de notes de bas de page supplémentaires ainsi que des indications appelées "*footnote designators*". Ces codes indiquaient la date à laquelle un tarif était censé entrer en vigueur, quelle était la classe du tarif, à quelle date un tarif cesserait d'être pratiqué, etc. Ces informations n'étaient pas accessibles aux agents de voyages utilisant les SIR. Autrement dit, les tarifs n'étaient pas appliqués aux ventes réelles de billets. En utilisant ATP, les compagnies aériennes pouvaient lancer des tarifs à titre d'essai et voir comment les autres compagnies décideraient de réagir. Elles pouvaient aussi exprimer leur mécontentement à l'égard de certains tarifs réduits. Si une autre compagnie pratiquait un tarif réduit, il était possible de transmettre à la base de données un tarif réduit équivalent ou plus bas encore, assorti d'une période de validité très courte, pour faire connaître son mécontentement et sa volonté de punir la compagnie offrant le tarif réduit si elle ne modifiait pas ses tarifs. Tout ce dispositif équivalait en somme à un système perfectionné de négociations de tarifs avec ses concurrents. Une partie de l'information diffusée par ATP était favorable à la concurrence, étant donné qu'elle veillait à ce que les agents de voyages soient informés de tous les tarifs, réductions et autres conditions. Le règlement amiable avec le ministère de la Justice dans cette affaire était long et complexe car il devait peser minutieusement les effets du système qui étaient favorables à la concurrence et ceux qui y étaient contraires.

Le **Président** fait remarquer que la contribution du Mexique examine une relation favorable entre concentration et niveaux de prix. L'autorité mexicaine de la concurrence (la Commission) a également intenté des poursuites pour tarification excessive sur certaines routes, ce qui soulève la question controversée de savoir comment déterminer que des prix sont excessifs. En 1995, la Commission a examiné un certain nombre de transactions faisant intervenir Aeromexico et a imposé ses conditions. La question de base du Président est de savoir si ces conditions se sont révélées vraiment efficaces pour maintenir la concurrence ou s'il n'aurait pas été préférable d'interdire les transactions.

Un délégué **mexicain** explique que lorsque la Commission a autorisé les deux plus importants transporteurs mexicains à s'associer, en 1995, ces derniers connaissaient tous deux de graves difficultés financières. Ils se sont réorganisés sous une même raison sociale -- Cintra -- mais ont été obligés d'exercer leurs activités individuellement. La Commission a défini une série d'obligations de résultats concernant notamment le comportement tarifaire et la concurrence sur différentes routes, et a établi des mécanismes très précis pour surveiller le respect de ces obligations.

La législation mexicaine autorise les compagnies aériennes à fixer leurs tarifs sans contrainte. Cependant, si la Commission estime que la concurrence est insuffisante sur certaines routes, elle peut demander au ministère des Transport d'imposer un contrôle des prix. La Commission a effectué un certain nombre d'études économétriques comparant les tarifs sur les routes intérieures et visant à maintenir constant l'effet des variables autres que les différences dans le nombre de concurrents. Il est admis que les résultats ne peuvent jamais être probants, mais ils servent néanmoins comme base à la Commission pour demander l'imposition d'un contrôle des prix. En fait, ce contrôle n'a jamais été exercé. Le délégué souligne également que la Commission ne voit pas d'un bon œil le contrôle des prix, qu'elle considère davantage comme un palliatif que comme un véritable remède. En outre, comme en ce qui a trait à toutes les mesures visant à agir sur le comportement des entreprises, le contrôle des prix exige tellement de temps à mettre en œuvre que le problème aura peut-être disparu lorsque le remède sera prêt. Il a ainsi fallu à la Commission plus de deux ans pour mettre au point une méthode de comparaison des prix et parvenir à la conclusion selon laquelle les tarifs sur certaines routes étaient très élevés.

Le **Président** aborde ensuite la question des gains d'efficacité souvent invoqués à l'appui des alliances et des fusions de compagnies aériennes. Les documents présentés pour la table ronde font état de certaines difficultés que pose l'évaluation de la véritable ampleur de ces gains d'efficacité. Il note ainsi que la contribution de la Norvège traite les avantages des fusions et des alliances au plan de l'efficacité dans le cadre de l'examen de l'acquisition de Widerøes par SAS. Le Président demande à la Norvège de développer son propos sur les gains d'efficacité que permettent de réaliser les fusions et les alliances dans le transport aérien et de décrire comment ces gains ont été évalués et pris en compte dans l'évaluation de la fusion Widerøes/SAS.

Un délégué **norvégien** explique qu'en 1998, l'un des deux transporteurs intérieurs dominants -- SAS -- est devenu le principal actionnaire d'un transporteur régional, Widerøes. Ce dernier est le troisième transporteur en importance de Norvège et l'unique prestataire de services aériens sur pratiquement tous les itinéraires qui sont soumis à l'obligation de service public, ce qui lui confère un monopole sur ces routes. L'autre principal transporteur, Braathens, fait concurrence à SAS sur pratiquement tout le marché intérieur déréglementé.

La principale préoccupation des examinateurs de la fusion a été que cette acquisition permettrait à SAS d'exploiter les routes sur lesquelles Widerøes détient un monopole, pour renforcer sa propre position sur les marchés libéralisés, autrement dit de rabattre le trafic de transit des routes de Widerøes vers les vols SAS sur les marchés déréglementés.

Les transporteurs ont fait valoir que la fusion permettrait de réaliser un certain nombre de gains d'efficacité tels qu'une réduction des temps de correspondance, une amélioration de l'efficacité des services d'escale, des services terminaux, ainsi que des systèmes informatiques et des autres systèmes administratifs, et faciliterait l'obtention de réductions plus importantes auprès des fournisseurs. L'autorité nationale de la concurrence n'a pas accepté de considérer les réductions plus importantes comme des gains d'efficacité. Selon elle, en effet, la plupart d'entre elles seraient liées à l'accroissement du pouvoir d'achat du transporteur et seraient par conséquent considérées essentiellement comme un transfert de recettes des fournisseurs vers les transporteurs. En revanche, l'autorité de la concurrence a accepté comme raison valable la possibilité que le transporteur régional bénéficie d'une diminution de ses coûts administratifs et informatiques et que la fusion se traduise par un gain d'efficacité au plan des services d'escale et des installations et services terminaux aux aéroports où les deux transporteurs sont présents.

L'autorité de la concurrence a autorisé la fusion sous plusieurs conditions concernant le comportement. S'agissant des fusions et des alliances de compagnies aériennes, elle est en général d'avis qu'elles peuvent se traduire au moins par certains gains d'efficacité, surtout lorsqu'il s'agit d'alliances mondiales faisant intervenir plusieurs parties simultanément présentes dans un certain nombre d'aéroports.

Ces gains seront probablement liés aux éléments suivants : temps de correspondance plus courts ; service "sans couture" (intégré) sur les trajets multi-étapes ; plus grande efficacité des services d'escale et de l'utilisation des installations terminales que si chacune des compagnies dispose de sa propre organisation aux aéroports concernés ; utilisation ou exploitation plus efficace des systèmes informatiques et autres systèmes administratifs des membres de l'alliance. Les compagnies membres pourraient être en mesure d'exploiter de nouvelles routes et d'élargir leurs services sur les routes qu'elles desservent déjà.

La concurrence pourrait également être réduite lorsque les concurrents, réels ou potentiels, concluent une alliance. Lorsque cela se produit, les autorités de la concurrence devraient envisager d'élaborer des conditions visant à éviter les effets anti-concurrentiels tout en permettant la réalisation des gains d'efficacité recherchés.

Le **Président** aborde alors la question proprement dite des remèdes appropriés. Dans leur contribution, les Etats-Unis soutiennent que dans la plupart des cas, les remèdes structurels tels que l'abandon de certaines routes constituent la solution appropriée, tout en notant par ailleurs que parfois, notamment lorsqu'il s'agit d'un opérateur d'aéroport-pivot, aucun remède structurel n'induirait l'apparition de nouveaux concurrents sur le marché. La CE est pour sa part d'avis que l'abandon de créneaux doit souvent s'accompagner d'autres mesures. Le Président lui demande d'étoffer son propos.

Un délégué de la **Commission européenne** explique que s'agissant des fusions et des alliances de compagnies aériennes, on entend en général par "abandon" la restitution des créneaux. Traditionnellement, comme cela s'est passé pour la fusion Swissair/Sabena et l'alliance SAS/Lufthansa, la CE a au début eu recours à cette solution. Toutefois, l'expérience a démontré qu'elle n'était pas toujours suffisante pour encourager les nouveaux entrants. C'est pourquoi la Commission a commencé à chercher d'autres mesures indépendamment de l'ensemble de conditions standard, par exemple l'accès aux programmes de fidélisation, l'égalité de traitement sur les SIR et l'obligation d'assurer des services intercompagnies. L'analyse du récent projet de fusion Alitalia/KLM, au sujet duquel la décision n'est pas encore publiée au moment de la table ronde, indique qu'aucun transporteur n'est intéressé à desservir les routes concernées étant donné la fréquence de service élevée assurée par les transporteurs en place. La CE a par conséquent obtenu l'engagement que si un nouvel entrant se manifeste, les parties à la fusion réduiront le nombre de leurs vols en fonction de celui que le nouvel entrant décidera d'ajouter jusqu'à concurrence de 40 pour cent de la fréquence actuelle, pendant une période de deux ans après l'apparition du nouvel entrant. La CE estime que cette affaire pourrait faire jurisprudence pour d'autres affaires de fusions ou d'alliances.

Le **Président** demande si ce type de mesure correctrice ne risque pas d'aboutir à l'attribution directe du marché par l'autorité de la concurrence. La Commission européenne reconnaît ce risque. Elle fait également ressortir les difficultés que pose l'élaboration des mesures correctrices adaptées aux fusions ou aux alliances lorsque les problèmes de concurrence se limitent à une faible proportion des itinéraires touchés.

Dans la suite du débat général, les **Etats-Unis** formulent d'autres observations sur des dossiers complexes dans lesquels une alliance engendre d'importants gains d'efficacité favorable à la concurrence sur la grande majorité des marchés concernés, mais soulève des préoccupations relatives à la concurrence sur certaines routes, notamment entre aéroports-pivots. Personne ne semble pouvoir contester que le service diminuera ces routes et que cela aboutira à la pratique de tarifs monopolistiques. Telle est la situation en ce qui concerne American Airlines/British Airways sur la desserte Dallas/Fort Worth -- Londres et Miami -- Londres. Comment les autorités de la concurrence devraient-elles s'y prendre pour maintenir la concurrence sur les marchés où les conséquences des fusions et des alliances sont défavorables ? La solution du ministère de la Justice, qui, reconnaissent les Etats-Unis, n'est pas très satisfaisante, était de recommander une exclusion. Cela équivalait à indiquer aux deux compagnies

aériennes qu'elles pouvaient coopérer sur les routes 1 à 10, mais qu'elles n'étaient pas censées communiquer sur la 11ème. Compte tenu de toutes les difficultés qu'il pose, ce système a néanmoins été jugé préférable à la solution recommandée par la CE dans certains cas, et justement pour les raisons évoquées par le Président. Si l'on impose des réductions de fréquence, un nouvel entrant pourra entrer en activité en sachant que s'il ajoute cinq routes, les transporteurs en place devront en éliminer le même nombre. On s'engage là sur une voie offrant des perspectives très intéressantes pour la coordination et le débat sur la façon de fixer notamment le niveau de service et les prix.

L'intervention de la CE a clos la partie de la table ronde consacrée aux présentations orales systématiques. Le **Président** met alors en évidence le fait que les autorités de la concurrence font preuve de discernement, dans la mesure où elles n'interdisent pas les fusions dès qu'elles constatent un problème lié à la concurrence, mais s'efforcent plutôt de trouver des mesures correctrices, ce qui est souvent difficile. L'attribution des créneaux constitue certainement une solution possible mais elle ne suffit pas toujours. La réduction de la fréquence des vols, comme le fait remarquer la CE, pourrait en être une autre, mais elle comporte elle-même des risques. Avant d'ouvrir une dernière période de débat général, le Président invite le BIAC à faire part de ses réactions.

Un délégué du **BIAC** fait remarquer que le débat a touché aux thèmes mentionnés par le BIAC dans sa déclaration d'ouverture. Il passe ensuite son micro à un représentant d'American Airlines qui traite de trois points essentiels : nécessité d'améliorer la coordination et la cohérence entre les autorités de la concurrence qui examinent les projets de fusions et d'alliances de compagnies aériennes, de prendre clairement en compte les différences qui existent entre les alliances comportant une intégration complète et les alliances commerciales moins globales, et d'accorder davantage d'attention aux effets de la réattribution des créneaux et d'autres installations et services aéroportuaires sur l'efficacité. Les responsables de la réglementation devraient également prendre en compte l'incidence importante que les autres aéroports de la même ville pourraient avoir sur la nécessité d'abandonner des créneaux et de réduire la fréquence en premier lieu.

L'examen des fusions et des alliances du point de vue de la concurrence peut se révéler une tâche très pénible à la fois pour les parties et pour les responsables de la réglementation, en raison des différences entre les diverses agences à l'intérieur d'un même pays ou d'un pays à l'autre. Il importe de trouver les moyens d'améliorer la coopération et la communication entre les autorités de la concurrence qui évaluent les projets de fusions et d'alliances de compagnies aériennes, tout particulièrement lorsqu'il y a partage de compétence entre les autorités des transports et celles de la concurrence, comme c'est le cas aux Etats-Unis.

S'agissant des fusions et des alliances en général, le délégué du BIAC fait valoir que de toute évidence, sous l'effet de la mondialisation et de la libéralisation, le transport aérien est devenu et demeurera une activité réticulaire. Il importe que les autorités réglementaires examinent minutieusement l'utilité des alliances, l'efficacité des aéroports-pivots ainsi que les avantages d'autres récentes innovations structurelles. Elles ne devraient pas s'attacher essentiellement, ou comme elles le font parfois, exclusivement, à créer de nouvelles possibilités d'entrée pour les transporteurs point à point, surtout lorsque le nombre de passagers sensibles au facteur temps qui empruntent les liaisons sans escale sur ces itinéraires constituent une proportion relativement faible de l'ensemble de la clientèle acheminée sur le réseau. Les autorités réglementaires devraient effectuer des évaluations en bonne et due forme des effets concurrentiels probables des projets de fusions et d'alliances, notamment en ce qui concerne les prix ainsi que la fréquence et la qualité du service.

S'agissant des alliances bilatérales entièrement intégrées à partage de codes, et en particulier de celles qui font intervenir une coordination de la capacité et des prix, American Airlines admet qu'elles doivent à juste titre faire l'objet d'un examen du point de vue de la concurrence. Cependant, il importe que

les gouvernements notent dûment qu'il existe souvent des différences de fonctionnement importantes entre les alliances. Ainsi, aux Etats-Unis, les alliances multilatérales de marques ne sont soumises à aucun type d'autorisation préalable par les autorités réglementaires. American Airlines est d'avis que ce système doit être maintenu, car contrairement aux alliances entièrement intégrées à partage de codes, les alliances multilatérales de marques visent à assurer un service intercompagnies intégré d'une qualité supérieure aux correspondances interlignes aléatoires d'un aéroport à un autre. Ces alliances permettent aux clients de bénéficier de programmes de fidélisation réciproques, de l'accès aux salons d'attente et de nombreux autres avantages. Dans l'alliance Oneworld, par exemple, le partage de codes n'est pas obligatoire, et ce ne sont du reste pas toutes les compagnies membres qui partagent leurs indicatifs.

Quant aux mesures correctrices adoptées en ce qui concerne les créneaux, elles devraient faire en sorte que les nouveaux transporteurs continuent d'être incités à obtenir des créneaux selon les modalités normales et à en faire un usage efficace. Il importe également de prendre en compte la possibilité que les contraintes de capacité d'un aéroport, sur le marché d'une paire de villes, soient neutralisées par la mise à disposition d'une capacité à d'autres aéroports. Par exemple, il y a plusieurs années, les pessimistes prédisaient un échec de la réglementation des compagnies aériennes aux Etats-Unis à cause de contraintes de capacités aux aéroports de Washington National et de La Guardia. Aujourd'hui, l'aéroport Dulles est devenu la plus importante plate-forme dans la région de Washington et un important aéroport-pivot pour *Northern and Virginia*. A New York, l'aéroport de Newark est devenu un grand aéroport-pivot desservant davantage de destinations d'affaires et d'agrément que La Guardia. Cette évolution ainsi que le fait que Virgin et United ont lancé six nouveaux services vers les Etats-Unis à partir de Heathrow depuis 1977 donnent à penser que la gravité des contraintes de capacité à Heathrow a été exagérée. En fait, la région de Londres offre trois aéroports aux voyageurs d'affaires et d'agrément. Comme Newark et Dulles aux Etats-Unis, Gatwick a pris de l'expansion pour devenir un important aéroport-pivot à la fois pour les services à l'intérieur de l'UE et pour d'autres services internationaux. Pour la clientèle d'affaires des vols sans escale, Gatwick constitue un aéroport de remplacement raisonnable pour Heathrow, et souvent le préféré. Le délégué note également qu'en ce qui concerne la fusion Continental/Northwest, le ministère de la Justice a adopté comme position que Newark et La Guardia constituaient une paire ou une ville commune, indépendamment du fait que Newark ne soit pas desservi par un service ferroviaire grande vitesse à partir du bas Manhattan comme le sont Heathrow et Gatwick à partir du centre de Londres.

Un autre délégué du **BIAC**, qui est associé à l'aéroport international Dallas-Fort Worth, fonde son intervention sur sa participation à divers examens de l'alliance American Airlines/British Airways du point de vue de la concurrence. Il appelle l'attention de ses collègues sur les problèmes qui se posent lorsque des alliances sont examinées simultanément par plusieurs autorités de la concurrence.

Dans l'affaire American Airlines/British Airways, l'aéroport de Dallas/Fort Worth devait présenter son dossier à quatre autorités différentes de la concurrence : le ministère des Transports des Etats-Unis, le ministère de la Justice, l'*Office of Fair Trading* (OFT) du Royaume-Uni et la Commission européenne. Il est arrivé que ces instances proposent des mesures correctrices contradictoires. En ce qui concerne le marché Dallas/Fort Worth-Londres, le ministère de la Justice a proposé une exclusion (ce qui veut dire que la coordination des prix serait interdite sur cette liaison), tandis que la CE et l'OFT ont proposé de réduire la fréquence du service tout en autorisant les transporteurs à coopérer au plan de la fréquence et de la tarification. En termes d'abandon de créneaux, les nombres proposés variaient entre 215 et 330 selon les différentes autorités. Sur la route Dallas/Fort Worth - Londres, l'une des autorités a proposé que les créneaux soient abandonnés au profit d'un nouveau transporteur tandis qu'une autre est arrivée à la conclusion qu'il est était peu probable qu'un nouvel entrant se manifeste sur la route de Dallas et qu'il n'était par conséquent pas nécessaire de libérer des créneaux. Il a été très difficile pour l'aéroport international de Dallas/Fort Worth d'évaluer ces mesures, aussi étonnantes que contradictoires, d'autant plus qu'elles procédaient d'une volonté commune des diverses autorités de la concurrence de créer de la concurrence pour les voyageurs d'affaires sensibles au facteur temps. Reprenant à son compte la position

exprimée par le délégué du BIAC représentant la *Metropolitan Washington Airports Authority*, le délégué souligne que le nombre de passagers pressés transportés sur des itinéraires entre aéroports-pivots est très faible. Sur la route Dallas-Londres, il s'agit de moins de 10 pour cent du total de passagers transportés au cours d'une année récente. En outre, les autorités de l'aéroport de Dallas/Fort Worth estiment que la concurrence des vols comprenant une escale est très efficace, attirant *grosso modo* de 15 à 20 pour cent de la clientèle. Le délégué préconise une coopération plus étroite entre les autorités de la concurrence avant que ne soient rendues des décisions finales, et il exprime le souhait que le Comité du droit et de la politique de la concurrence examine cette question lors de ses prochaines réunions.

Le **Président** ajoute que les décisions ne sont pas prises à la légère par les autorités de la concurrence. Celles-ci peuvent se tromper mais, comme le débat l'a démontré, elles ne rendent leurs décisions qu'après mûre réflexion. En ce qui concerne la coopération entre les organismes chargés de la concurrence, il convient qu'elle s'impose en particulier pour les compagnies aériennes. C'est là une question à laquelle le Comité du droit et de la politique de la concurrence, le Groupe conjoint de l'OCDE sur les échanges et la concurrence, ainsi que d'autres instances accordent actuellement beaucoup d'attention. La table ronde est en partie motivée par une volonté de promouvoir la convergence des approches en matière d'examen des projets de fusions ou d'alliances de compagnies aériennes, et devrait permettre de tenir compte de certaines préoccupations de ces dernières. Le Président ouvre ensuite le débat général.

Un délégué de la **Commission européenne** se prononce en faveur d'une coopération plus étroite entre les autorités de la concurrence, mais il note que si un accord de coopération a été conclu entre les autorités de la concurrence de la CE et celles des Etats-Unis, tel n'est pas encore le cas entre les ministères des transports. La CE souhaiterait que l'accord de coopération soit étendu au ministère des Transports des Etats-Unis, ou que les autorités de la concurrence obtiennent la compétence exclusive à cet égard. L'une ou l'autre solution contribuerait à améliorer la coopération entre les Etats-Unis et la CE.

Un délégué du ministère de la Justice des **Etats-Unis** ajoute qu'en ce qui concerne l'affaire American Airlines/British Airways, le ministère de la Justice, et l'OFT et la CE ont maintenu une communication étroite. Sans une consultation régulière, les résultats auraient pu être encore plus divergents qu'ils ne l'ont été. Un délégué du Royaume-Uni fait sienne cette évaluation.

Un délégué des **Etats-Unis**, du ministère des Transports, fait trois observations. Premièrement, il y a de plus en plus de raisons de croire que les alliances mondiales, et certainement celles qui concernent les routes transatlantiques, favorisent l'amélioration du service pour des millions de passagers sur des milliers de marchés. Cela ne veut pas dire qu'elles ne posent aucun problème du point de vue de la concurrence, mais les alliances semblent exercer une pression à la baisse sur les tarifs, en particulier sur les marchés des liaisons qui vont au-delà des aéroports points d'accès. Il a mentionné un document du ministère des Transports à ce sujet qui a circulé, tardivement, en tant que document de séance de la table ronde, et a encouragé les délégués à le lire. Deuxièmement, le délégué revient à la déclaration de clôture du BIAC, pour faire valoir que de la même façon qu'on ne saurait considérer les mesures correctrices comme étant applicables universellement, on se gardera d'adopter des hypothèses globales quant aux types de situations que les responsables des questions de concurrence seront appelés à examiner à l'avenir. Bien que le ministère des Transports n'examine actuellement pas régulièrement des alliances de marques proprement dites, cela ne veut pas dire qu'il en sera toujours ainsi quels que soient les transporteurs ou les marchés en cause. Enfin, le délégué fait remarquer qu'en ce qui concerne les observations du représentant de l'administration de l'aéroport de Dallas au sujet des difficultés liées à l'obligation de traiter avec plusieurs autorités de la concurrence, l'un des quatre organismes intervenus dans l'affaire American Airlines/British Airways, le ministère des Transports, n'a pas recommandé de mesures correctrices.

Un délégué **mexicain** note que la table ronde ne s'est pas penchée sur la question de l'exception de défaillance de l'entreprise, qui est souvent soulevée dans les audiences concernant les compagnies aériennes dans son pays. Dans quelle mesure y a-t-il lieu de faire valoir sans cesse cette exception ? Il ajoute que bon nombre des problèmes que connaissent actuellement les compagnies aériennes sont liés à une déréglementation inadaptée. Le processus n'a pas été mené de façon aussi harmonieuse et n'a pas eu la même portée que dans d'autres secteurs.

S'agissant de l'exception de défaillance de l'entreprise, le **Président** rappelle aux délégués la table ronde que le Comité du droit et de la politique de la concurrence a déjà consacré à cette question. Il est vrai que des organismes différents appliquent des normes d'examen différentes. Il ajoute que compte tenu de l'économie du transport aérien, une méthodologie spéciale devrait peut-être être mise au point pour le recours à cette exception dans ce secteur.

A mi-chemin de la table ronde, le Président a renforcé la position adoptée par plusieurs délégations selon laquelle les compagnies aériennes devraient essentiellement faire l'objet du même traitement que les autres secteurs. Selon lui, les gouvernements ne seraient pas étonnés que les autorités de la concurrence adoptent ces vues, et un tel consensus ne devrait pas les heurter. Néanmoins, il estime que la table ronde a permis de dégager trois types d'informations qui devraient se révéler utiles pour infléchir la politique gouvernementale. Premièrement, il attire l'attention sur le fait que bon nombre des problèmes liés à la concurrence dans ce secteur découlent directement ou indirectement de la réglementation, en particulier au plan international. Deuxièmement, l'application du droit de la concurrence dans le secteur est dans une large mesure comparable au plan international. Les autorités de la concurrence utilisent ou ont tendance à utiliser les mêmes critères pour évaluer les situations. Troisièmement, étant donné la protection assurée par les régimes réglementaires en vigueur, les compagnies aériennes pourraient être tentées de recourir à des stratégies anticoncurrentielles pour se protéger contre leurs concurrents.