

Ownership and control in airlines

(Presented by International Air Transport Association - IATA)

- **Why, to your opinion, are there restrictions in aviation sector, whereas they do not exist in other transport sectors (such as maritime or railway)?**

First, ownership restrictions are not unique to the aviation sector, as the question assumes. In the marine sector, for example, domestic shipping in the U.S. is restricted to vessels owned and operated by U.S. citizens. Similar restrictions on the ownership of vessels can be found in other countries. Foreign investment is frequently restricted in other sectors as well, such as communications and energy.

In international aviation, there are two sources of these restrictions: (i) national law, and (ii) bilateral air services agreements. Historically, national law restrictions are attributable to national security concerns and a desire to ensure the availability of air transportation adequate to the country's requirements. (Foreign investors may be seen by smaller, developing economies as "fair weather friends" who cannot be relied upon to maintain a country's essential connectivity in times of economic hardship.)

The restrictions were typically incorporated in bilateral air services agreements to prevent "free riding." If Country A makes certain destinations available to the airlines of Country B in an agreement with Country B, it will not want an airline of Country C to enjoy those benefits merely by investing in a Country B airline.

The restrictions are likely maintained today for a number of other reasons linked to trade policy, labor relations, lingering national security concerns and so on. One must also not discount the importance of national pride in some markets.

Some governments have taken a proactive stance on loosening foreign ownership restrictions. A domestic Australian airline can, for example, be 100% owned by non-Australians. This is, however, a very rare exception. And it does not extend to international operations.

- **Is ownership and control an issue for IATA airlines?**

Quite frankly, it's not. There appears to be no dearth of capital available to airlines from domestic sources, which means that the airlines have not found a compelling need to campaign for a change in national law that they know would be controversial in many countries. Moreover, the advent of immunized joint ventures among airlines and global branded alliances is delivering most if not all of the consumer benefits (seamless, global connectivity; robust competition on a global scale) that cross-border mergers, if permitted, would deliver. In short, because the restrictions on foreign

investment in airlines do not appear to have impeded the industry's growth or development, the issue is not on IATA's agenda.

- **Do you consider current restrictions regarding ownership and control in the aviation industry adequate?**

If the purpose of the restrictions is to retain national ownership, then they are doing what they were intended to do. Again, within that framework, they have also allowed for the development of alliances and joint ventures which gives airlines the flexibility to join forces where necessary to serve the needs of their customers.

- **What could be the benefits of fully relaxing foreign investment in airlines?**

Access to global capital markets is often cited as a benefit. While that is appealing—indeed taken as normal for most industries—I don't see a crisis in access to capital that would compel governments to seek this policy solution. The fact of the matter is that the global airline industry is doing rather well financially. Consumers have cheaper fares than ever. The global network is denser than it has ever been. And more people are flying—some 4.1 billion passengers are expected to board aircraft this year. So I am not sure that governments will see a compelling reason in that very good news story to seek change.

- **Do you believe in the creation of truly global airlines?**

No airline can serve all its customer needs by itself. The first work-around is the global alliance structure. It allows airlines to work together to ensure smooth journeys for travelers. Immunized joint ventures take that up a notch by allowing airlines to work together to develop specific markets in a very efficient way.

On the cargo side, the integrators are probably the closest that we have to truly global airlines. Cargo is absolutely vital to national economies, but somehow it does not carry the same national emotional attachments. That has allowed these airlines to go further towards a global airline model with logistics hubs dispersed globally and Seventh Freedom rights allowing them to operate far more efficiently. But even at that, they still face restrictions and rely on partnerships as efficient work-arounds.

- **Would it be sufficient for a few States to remove ownership and control restrictions between themselves to allow their airlines to fly globally? Does it not require ICAO to work on the topic to ensure that relaxation of ownership and control between States are fully recognized and accepted by all States?**

You are referring again to the restrictions that appear in bilateral agreements. That is essentially what has happened within the EU. The benefits of the European common aviation area are there for all to see. ASEAN is, to a certain extent, replicating that with its open aviation area—but without addressing ownership and control. There are similarly interesting developments taking place in Latin America (e.g., the LATAM and Avianca groups of airlines).

Beyond what has happened to date, nothing prevents a state from deciding not to enforce the nationality requirements in a bilateral agreement where the other state has liberalized its national law to allow foreign ownership and control of its domestic airlines.

If governments want to broadly pursue changes in ownership and control rules, ICAO as a whole, or its regional groupings would certainly need to play a role. But let's remember that ICAO is a membership organization of states, and there does not appear to be anything close to a consensus among states on the question of foreign ownership. And, in the current climate—financial sustainability among airlines at the global level and a general trend of more protectionist policies—I don't see the impetus for governments to move this forward.

- **Removing the ownership and control rules could result in worldwide consolidation of the airline industry. Do you think this would occur? If so, what do you see as the potential benefits and pitfalls of this potential consolidation?**

Experience is the best teacher. The U.S. domestic experience shows us that a fragmented industry in a single very large market benefits from consolidation. And thanks to deregulation consumers continue to enjoy robust competition among large and small carriers. The European experience demonstrates that, given the opportunity of relaxed ownership and control rules, airlines will pursue consolidation in various forms. And that has not stopped new entrants, particularly LCCs, from intensifying competition. In Latin America, trans-national airline groupings have been the solution reviving aviation in a region that has had more than its fair share of challenges.

Bottom line: I doubt that relaxing the ownership and control restrictions would result in a worldwide consolidation of the industry. And even if it did, the products of that consolidation could look forward to strong challenges from existing new model airlines and new entrants.

- **Some states argue that there is a public service role for air carriers; for example, serving remote communities and promoting trade and tourism. There is concern that that the removal of ownership restrictions would impede this public service function. How would you respond to this concern?**

Airlines are called on to perform public service functions in many markets. Business always works best when it operates on purely commercial terms. But I don't see this discussion as being either a major blocker or a major proponent to any reconsideration of ownership and control rules.

A recent study of the U.S. market by FlightGlobal should be a source of reassurance to anyone concerned about consolidation. The study notes that, despite the consolidation that has taken place there, smaller airports throughout the U.S. have experienced new levels of growth in the past few years due to the advent of LCCs and ULCCs, and that the larger airlines are responding by increasing their own regional services.

- **Removing the ownership and control restrictions may require the redrafting of hundreds of air services agreements. How would the regulatory structure for the aviation industry change with the removal of the restrictions? Would the current bilateral system be replaced by a multilateral system? What are the advantages and disadvantages of reworking the aviation regulatory structure?**

The only provision in a bilateral air service agreement that would be implicated by a removal of ownership and control restrictions is the so-called nationality clause, which enables, but does not require, either party to revoke the permission given to an airline of the other party when that airline is not substantially owned and effectively controlled by nationals of the other party. In other words, it is a “permissive” provision, meaning that each state has the unilateral discretion to waive its enforcement. Bilateral air services agreements therefore are not an impediment to a removal of ownership and control restrictions, nor would the removal of such restrictions necessarily require overhauling the current regulatory structure.

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