

4TH ICAO AIR TRANSPORT SYMPOSIUM (IATS 4)

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Michiel Laumans

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- Is there a need to liberalize ownership and control?
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LEGAL CONTEXT IN THE EUROPEAN UNION

- From early 1990s US developed Open Skies agreements
- The EU also introduced a new approach:
 - first package (1987)
 - second package (1990)
 - third package (1993 completed in 1997)
- Traditionally bilateral agreements contain nationality clauses
- Open Skies judgement of Nov 2002

LEGAL CONTEXT IN THE EUROPEAN UNION

- After the 2002 Open Skies judgement, in June 2003 the Council granted the EC a mandate to negotiate:
 - comprehensive agreement with the US
 - horizontal agreements with 3rd countries
- 2005 EC presented a Communication on external aviation policy. Market opening versus regulatory convergence.

Air France and KLM always supported this principle

LEGAL CONTEXT IN THE EUROPEAN UNION

- In 2008 the EC simplified the legal framework for the internal air transport market and issued Reg. 1008/2008.
- Reg. 1008/2008 reiterates the need for majority EU ownership and control of EU airlines.
- EU regime is one of the world's most liberal regimes

LEGAL CONTEXT IN THE EUROPEAN UNION

- But, Reg. 1008/2008 art 4 (f) opens the door to go beyond 49%
- An international agreement is needed to go beyond 49%
- For an international agreement a substantial level of regulatory convergence is required

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OPERATIONAL CONTEXT

- Air France/KLM set the example in 2004: cross national ownership is possible
- There was no external opposition to the structure.

REALITY OF EU NEGOTIATIONS

We can distinguish three categories:

- Mature markets (US/Canada): avoid divergence
- Neighborhood countries: full acceptance of EU Acquis
- Rest of the world: more interest in market access than in regulatory convergence.

IS THERE A NEED TO LIBERALIZE OWNERSHIP AND CONTROL?

Our point of view:

- Liberalization of ownership and control needs to link to fair competition.
- Liberalization of ownership and control should only be granted to countries that are enforcing robust state aid rules.
- If the EC and its Member States wish to change the ownership and control requirements, they should follow the required procedure.
- Main global markets don't relax their ownership and control rules.
- EU's comprehensive agreements with US, Canada and ASEAN (?) liberalize market access, but not ownership and control.
- Industry's priority is to optimize economic conditions.

HOW TO DO IT?

- Multilateral versus the EU way?
- Air France/KLM prefers the EU way: best guarantee a fair competition framework will be in place. Airlines, which are the first to be concerned, will be able to give input.

WHAT IS NATIONALITY?

We need clarity on:

- What determines nationality?
- Where is the money coming from?

CONCLUSION

- Air France / KLM strongly believes liberalization of ownership and control has to be subject to a regulatory framework guaranteeing fair competition.
- We are ready to work with all institutions on the issue.