

How Do We Further Liberalize Airline Markets From Here?

Revising the Chicago Convention
and Other Stories

A Keynote Speech to the JITI Seminar on
the Liberalization of International Aviation

by

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The *Ancien Regime* is Crumbling

- Domestic Deregulation Around the World
- Open Skies Agreements
- U.S. – EU Negotiations – Gradual Collapse of Bermuda 2
- Japanese *Nemawashi* Process Begun
 - ITI Research Committee Report
 - Japan Council on Economic and Fiscal Policy Private Sector Members paper

What will replace it?

JITI Committee Report lists Five Options, each of which maintains a role for government.

- Revise Chicago Convention
- New *International Civil Aviation Agreement*
- Regional multilaterals
- More liberal bilaterals
- GATS regime

Appearances and Reality

In all the current regimes, negotiations and proposals, the parties compete with each other to state the broadest possible embrace of liberalization and competition as a goal.

But what is reserved for intervention is critical in determining how competitive the regime really is.

Ancien Regime

- Non-Bermuda with predetermined capacity, frequency, prices, etc.
- Historic U.S. Bermuda I agreements
 - Modified Bermuda
 - Bermuda 2
- U.S. Open Skies
- U.S.- EU Open Skies “Agreement”

To Understand, Look at Internal Markets

In the EU, there is an internal market that is very open in principle, but competition is held in check by:

- airport policies
- “consumer protection” regulations
- the application of the “state aid” prohibitions

To Understand, Look at Internal Markets

In Japan, the internal market is liberally regulated on paper, but:

- infrastructure constraints and government policy prevent awarding enough slots to create a startup of sufficient size and scope to survive as a real competitor to JAL and ANA.
- the government reserves the right to regulate fares as well.

To Understand, Look at Internal Markets

In the US, the internal market is completely open in principle, but doesn't allow foreign:

- Operations (cabotage)
- Establishment
- Investment
- Management

Substance and detail, not form and principles, matter

- Who gets to apply competition policy and will that process be dominated by protectionists, interventionists or those favoring free markets?
- When will competition policy protect competitors rather than competition?
- Should the national government retain any right to regulate fares in the name of consumer protection or must it depend on structural competition remedies?
- Do the “right of establishment” and “national treatment” for foreign owned subsidiaries make cabotage a moot issue?

Substance and detail, not form and principles, matter

- When is “consumer protection” a *de facto* price floor?
- What is the mechanism for handling disputes?
 - What sanctions are available to enforce decisions?
 - How can the dispute mechanism avoid being dominated by states with protectionist interests?

Substance and detail, not form and principles, matter

- When is “state aid” policy entry protection and when does it keep dead airlines alive?
- Should total privatization be required?
- When is infrastructure policy *de facto* state aid to the “home team”?
 - Provision of airport capacity and foreign investment
 - Government (national or local) rules on which airlines can operate to which airports
 - Slot restrictions and allocation

How Do We Get to Liberalized Markets From Here?

- Report reinforces the complexity of the problems and solutions
- Comprehensive reworking is a least common denominator, risk-averse process (See GATT)
- Incremental, smaller-group, consent-based process allows experimentation, regulatory competition.