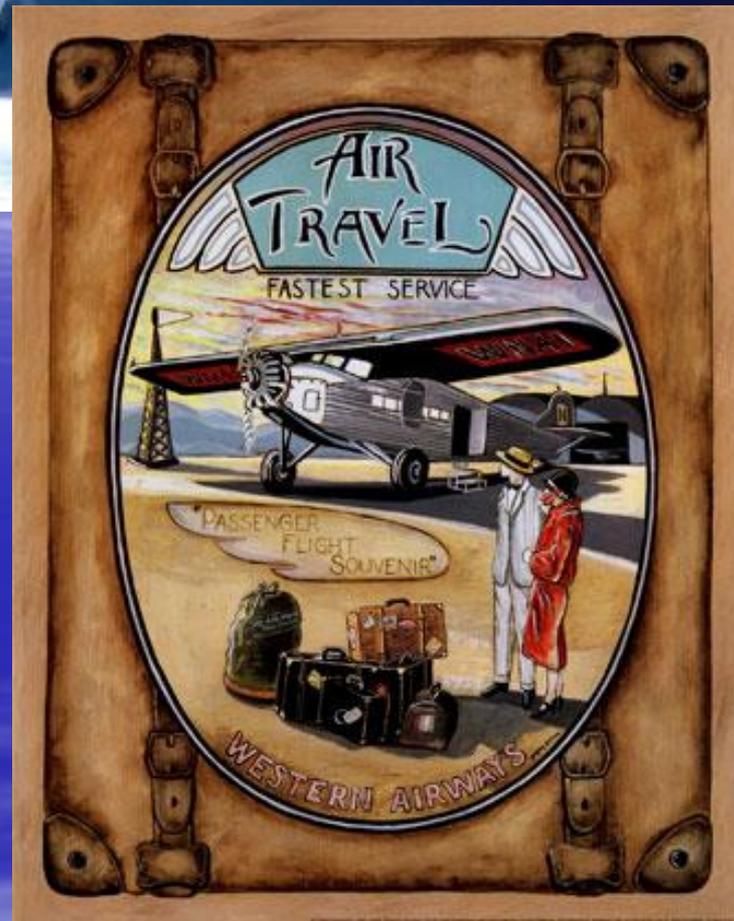




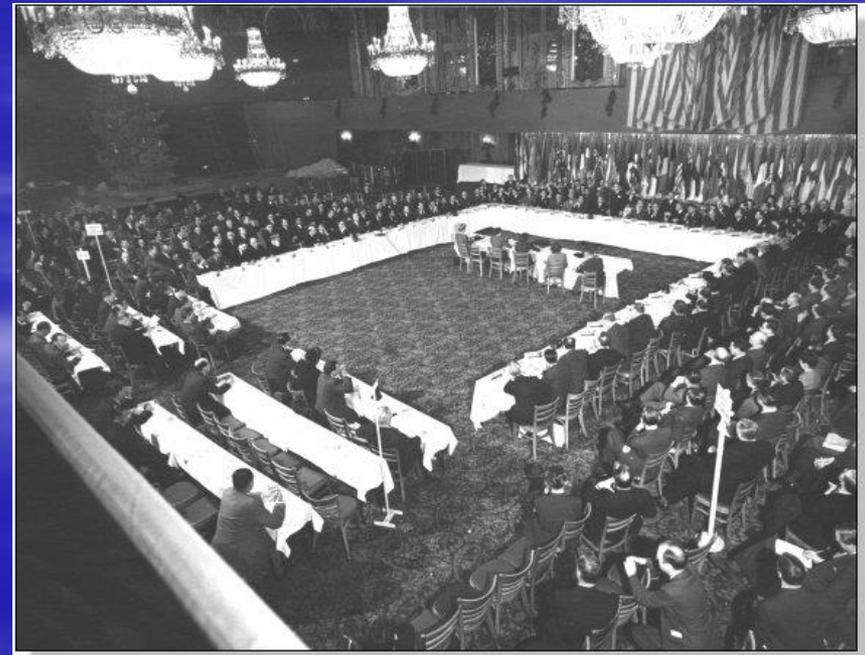
# AIR TRAFFIC RIGHTS: DEREGULATION AND LIBERALIZATION



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# The Chicago Conference of 1944

- At Chicago, the British and Canadians urged creation of an international regulatory authority to distribute routes;
- The Australians and New Zealanders urged creation of a single international airline;
- The U.S. urged open skies.
- A political impasse resulted, so that the Chicago Convention conferred only advisory powers to ICAO over economic issues (Art. 44).
- However, two “side agreements” addressing traffic rights - the Transit Agreement and the Transport Agreement, as well as a model bilateral air services agreements - were drafted in Chicago.



# Bilaterals

- The failure to agree on commercial issues at Chicago led to the bilateral negotiation of traffic rights.
- Thus, bilateral air transport agreements have become the principal vehicle for implementing the rights conferred to States under Articles 1 and 6 of the Chicago Convention to authorize international scheduled air services to, from and through their territory.
- Today, there are more than 2,500 bilateral air transport agreements between nearly 200 States.





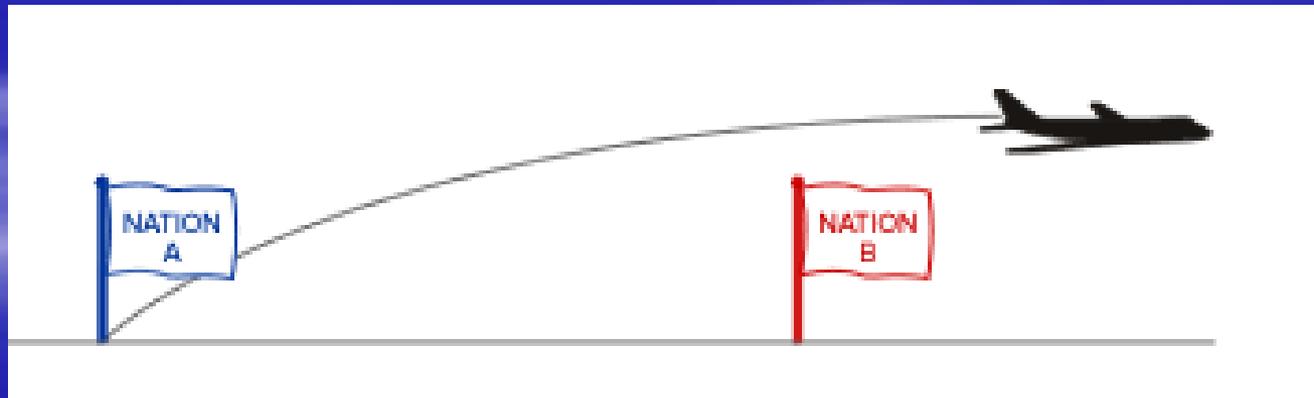
## The Chicago Convention

- **Article 1** recognizes that each State enjoys complete and exclusive sovereignty over the airspace above its territory.
- **Article 5** gives non-scheduled flights 1<sup>st</sup> and 2<sup>nd</sup> Freedom rights, but restricts carriage for compensation on 3<sup>rd</sup> and 4<sup>th</sup> Freedoms to “such regulations, conditions or limitations” as the underlying State deems desirable.
- **Article 6** provides that no scheduled flight may operate over or into the territory of a State without its permission, and pursuant to any terms or conditions thereon.
- The Chicago Conference produced two multilateral documents to exchange such rights – the **Transit Agreement** (exchanging First and Second Freedom rights), and the **Transport Agreement** (exchanging the first Five Freedoms).
- The former has been widely adopted, while the latter has received few ratifications.



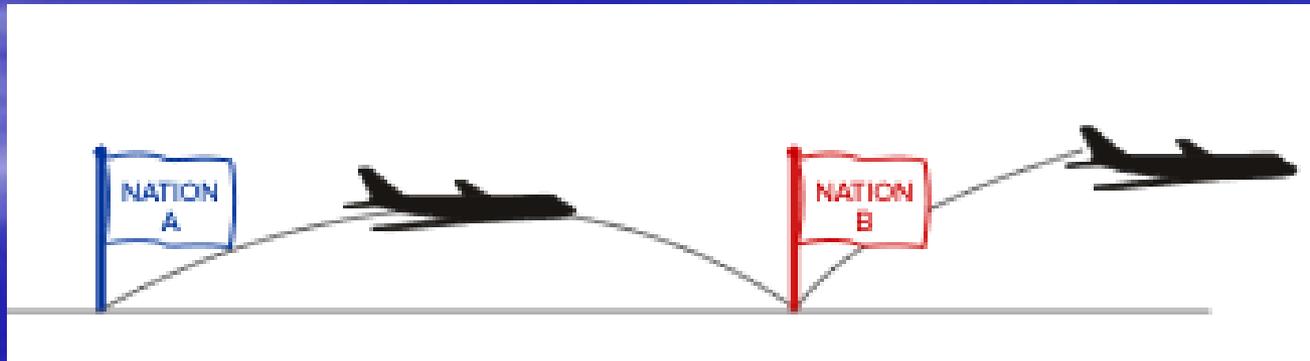
## *First Freedom*

The civil aircraft of one State has the right to fly over the territory of another State without landing, provided the overflown State is notified in advance and approval is given.



## *Second Freedom*

A civil aircraft of one State has the right to land in another State for technical reasons, such as refueling or maintenance, without offering any commercial service to or from that point.





The First and Second Freedoms were multilaterally exchanged in the

## **Transit Agreement**

concluded at the Chicago Conference in 1944.

126 States have ratified the Transit Agreement.

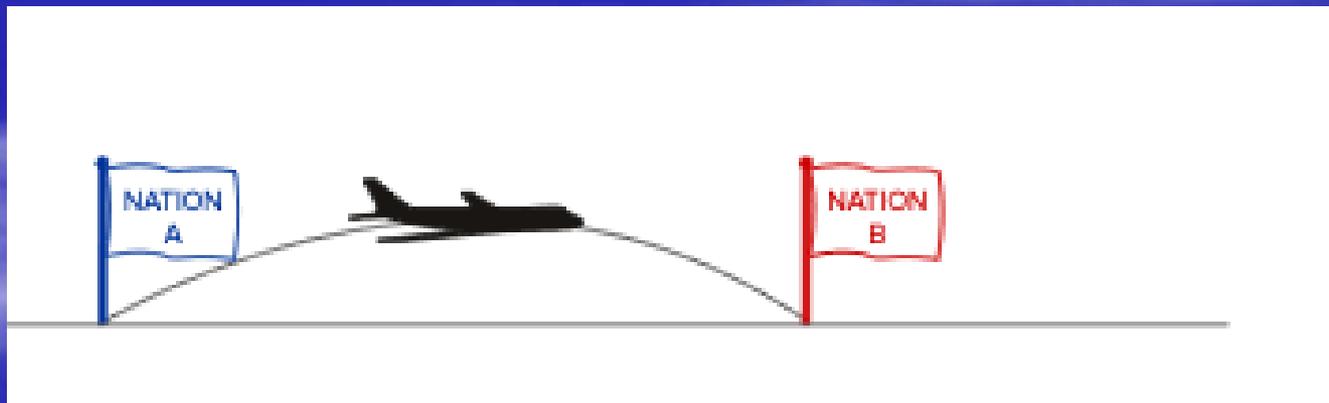
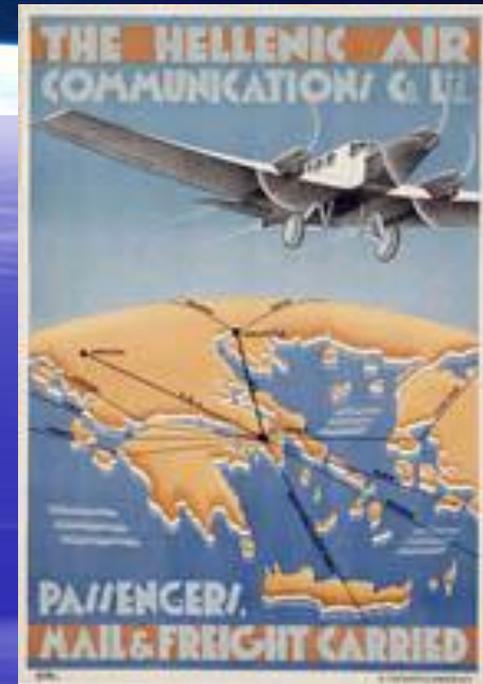
However, several large States have not ratified the Transit Agreement, including the Russian Federation, Canada, China, Brazil, and Indonesia.

Hence, for these major States, transit rights must be negotiated bilaterally.



# *Third Freedom*

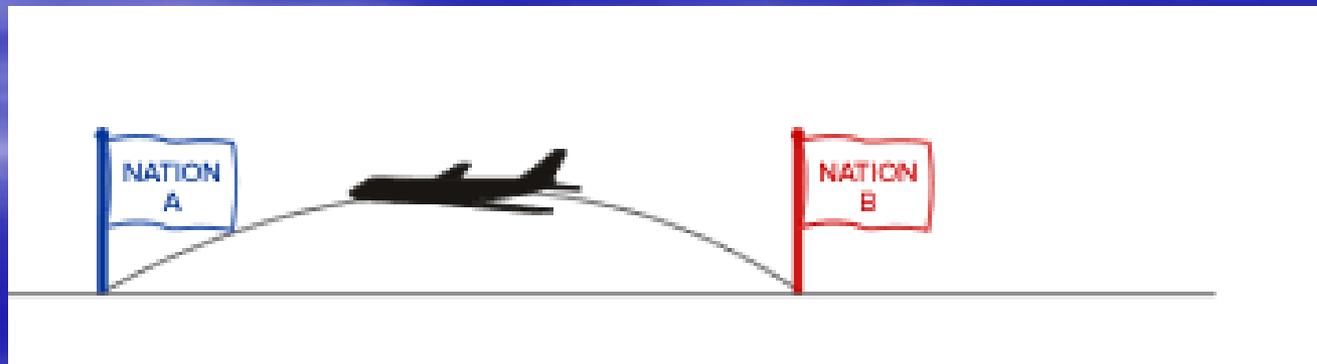
An airline has the right to carry traffic from its flag State to another State.





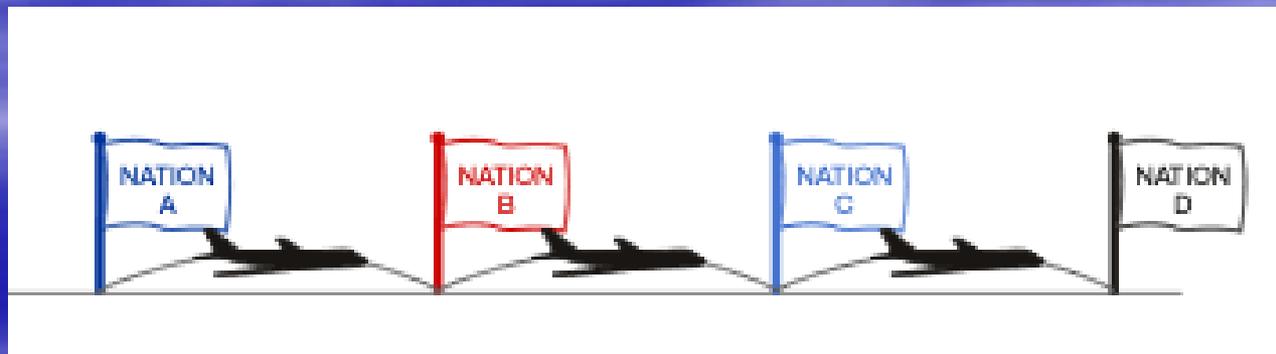
## *Fourth Freedom*

An airline has the right to carry traffic from another State to its own State.



## *Fifth Freedom*

An airline has the right to carry traffic between two countries outside its own State so long as the flight originates or terminates in its own State.



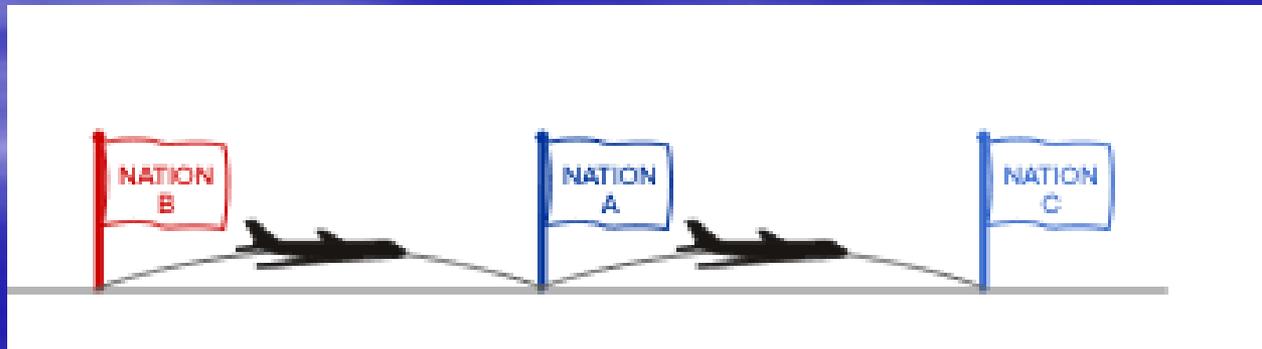


- The first five rights were included in the **Transport Agreement** concluded at the Chicago Conference in 1944.
- However, only 11 States are Parties to the Transport Agreement. *Bolivia, Burundi, Costa Rica, El Salvador, Ethiopia, Greece\*, Honduras, Liberia, Netherlands, Paraguay, Turkey\**
- Thus, most traffic rights have been exchanged bilaterally.



# *Sixth Freedom*

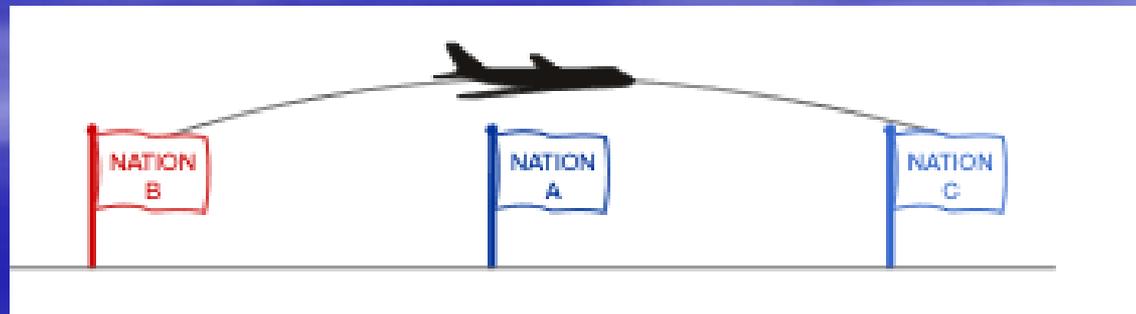
An airline has the right to carry traffic between two foreign countries via its own State. (Sixth freedom can also be viewed as a combination of third and fourth freedoms secured by the State from two different countries).





## Seventh Freedom

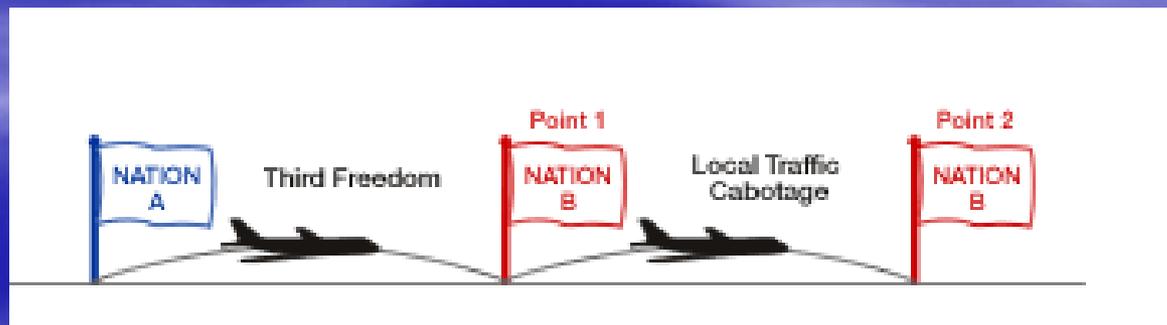
*An airline operating entirely outside the territory of its State has the right to fly into another State and there discharge, or take on, traffic coming from, or destined to, a third State.*





## *Eighth Freedom*

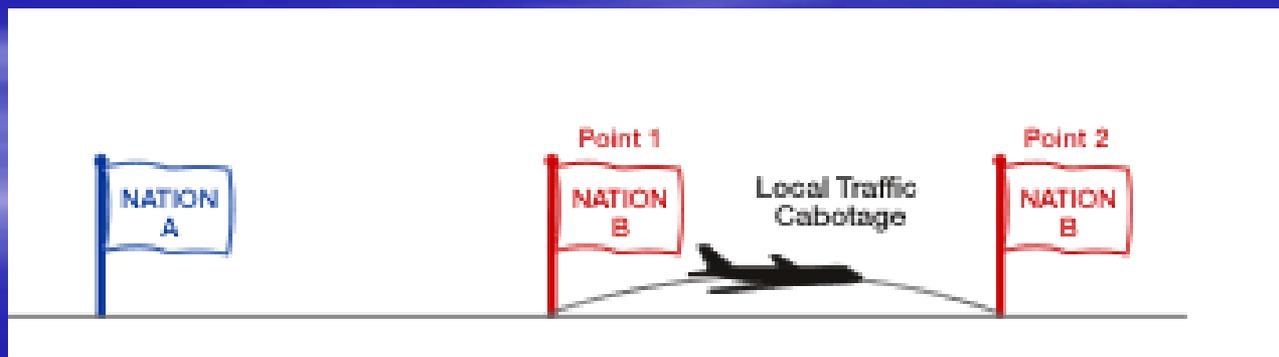
An airline has the right to carry traffic from one point in the territory of a State to another point in the same State on a flight which originates in the airline's home State. (This right is more commonly known as consecutive cabotage, in which domestic traffic is reserved to domestic carriers).

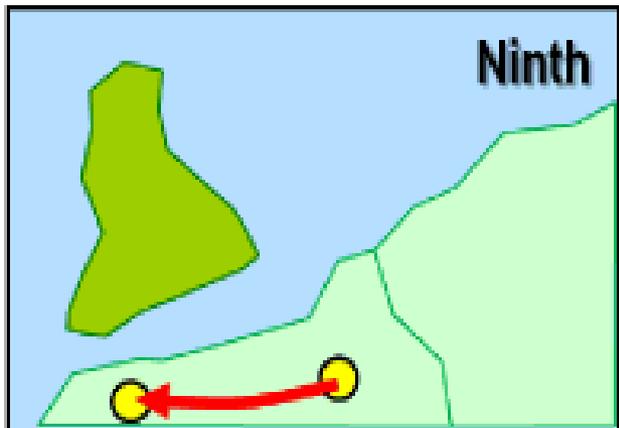
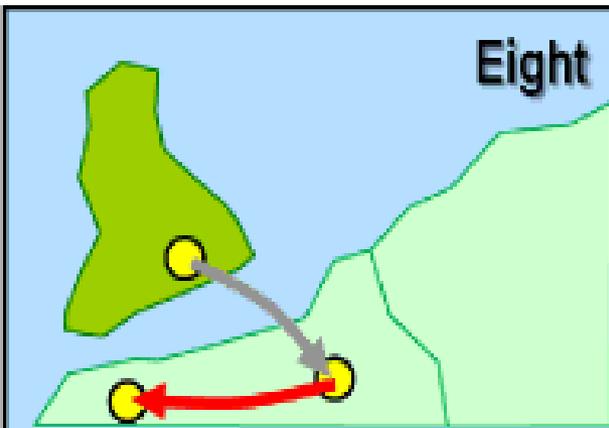
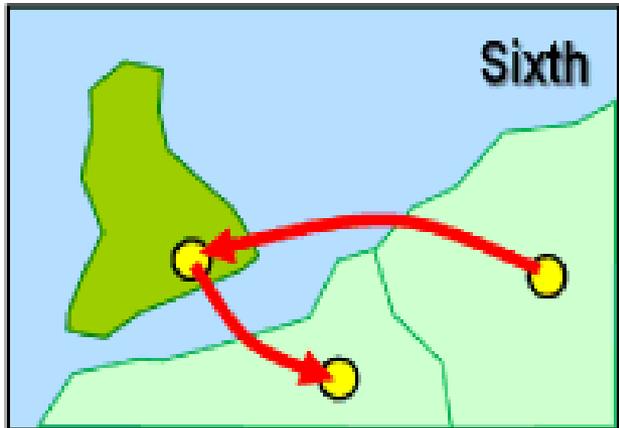
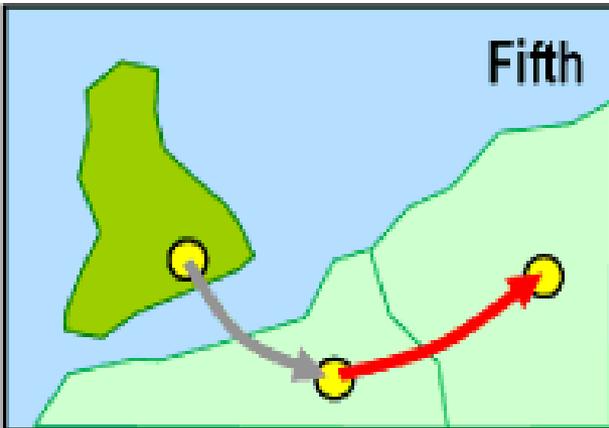
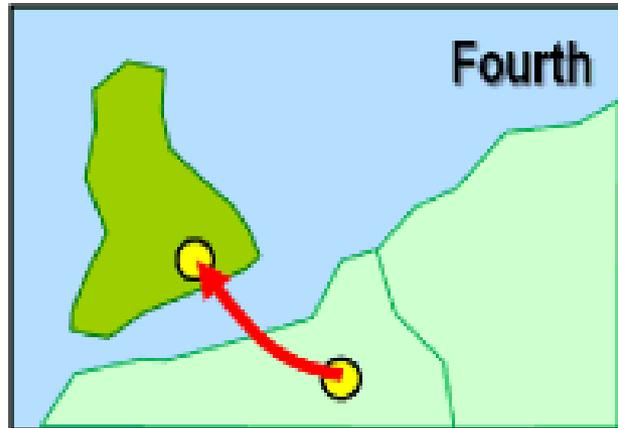
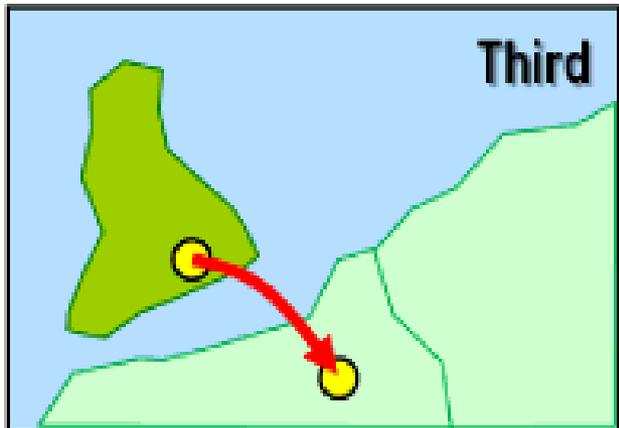
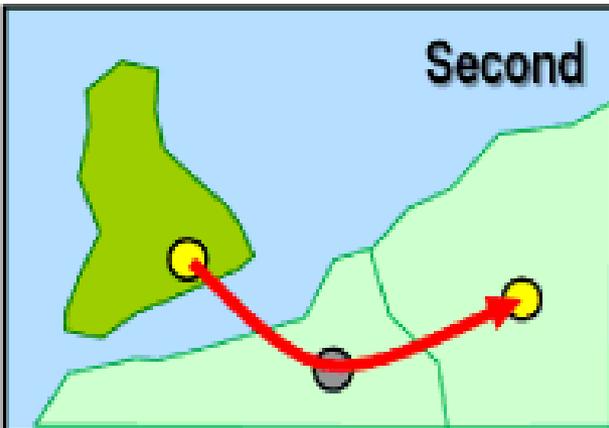
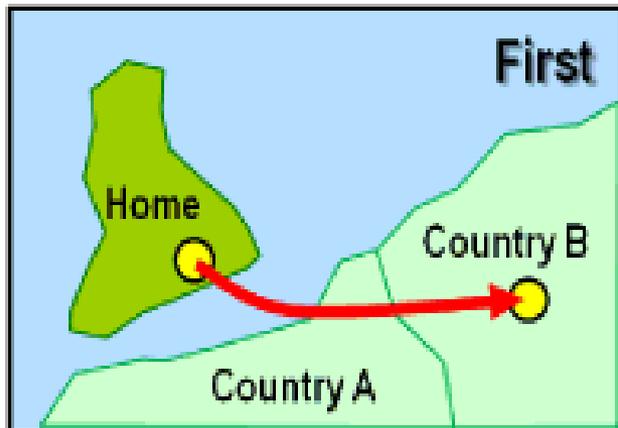




## *Ninth Freedom*

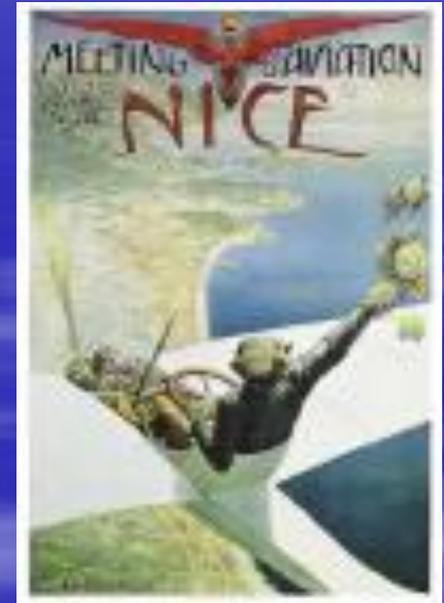
An airline has the right to carry traffic from one point in the territory of a State to another point in the same State. (This right is pure cabotage).





# PROFESSOR JOHN COBB COOPER

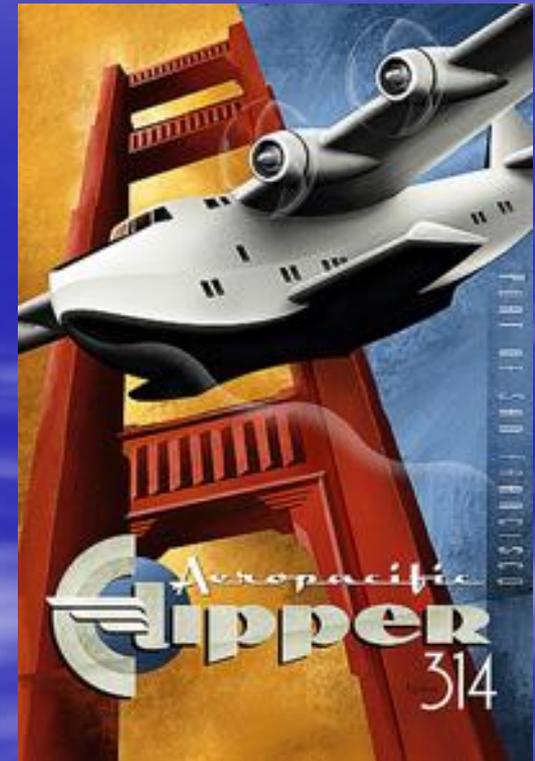
“Any nation, except during that the time that it is committed otherwise by the Transit or Transport or other special Agreements, is still fully authorized to take advantage of its own political position and bargaining power, as well as the fortunate geographical position of its homeland and outlying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



# Bermuda I and the Early Bilaterals

Early bilateral air transport agreements typically addressed several issues:

- (1) entry (designation of carriers and routes);
- (2) carrier nationality;
- (3) capacity;
- (4) rates;
- (5) discrimination and fair competition; and
- (6) dispute resolution

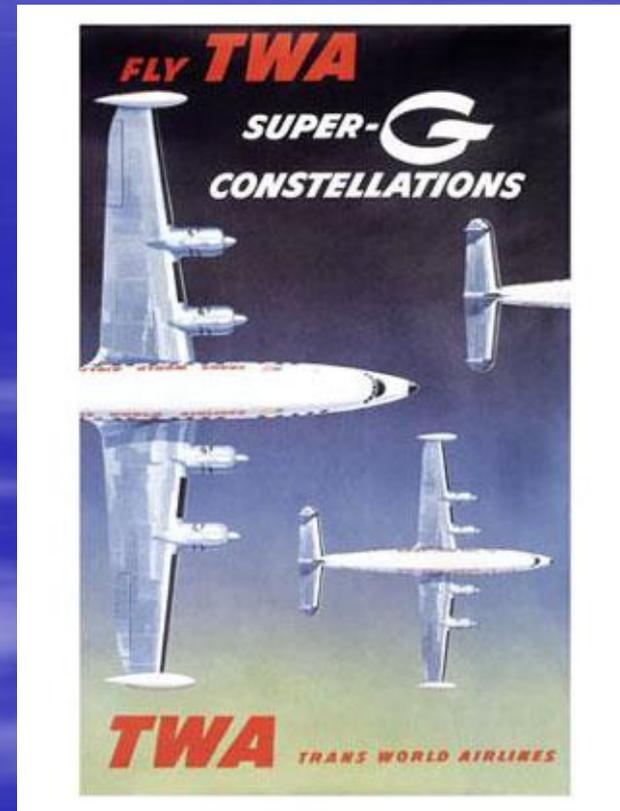


# *Bermuda I: ENTRY*

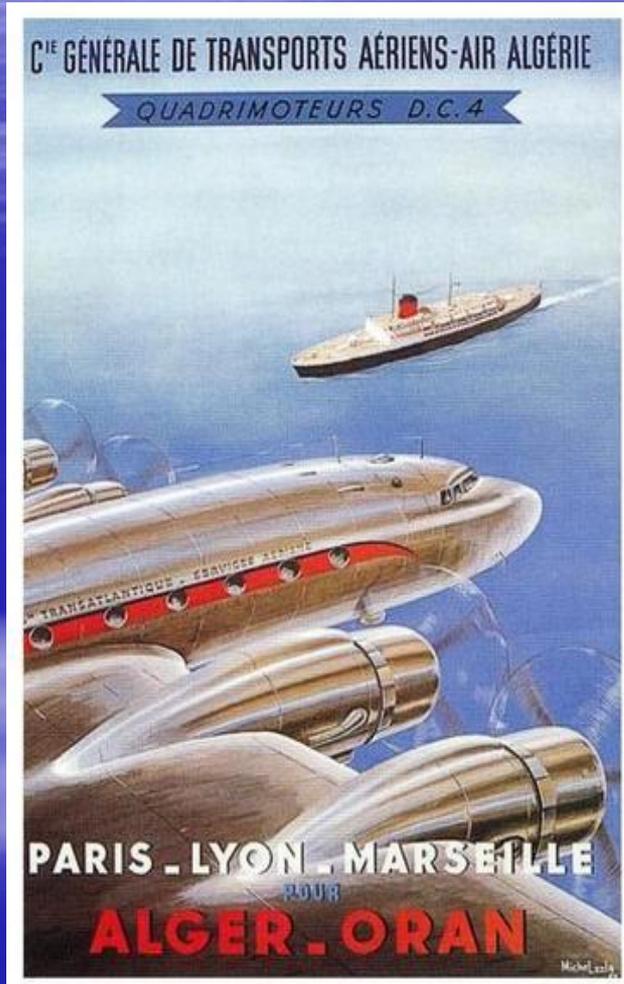
Typically, States exchanged traffic rights on a *quid-pro-quo* basis.

Bermuda I-type bilaterals usually identified the routes to be served in an Annex appended thereto, which would be revised periodically with an exchange of notes.

Typically, each State designated one of its flag carriers per city-pair route.



# Substantial Ownership and Effective Control



Section 5 of the Transit Agreement, and Section 6 of the Transport Agreement, provide: “Each contracting State reserves the right to withhold or revoke a certificate or permit to an air transport enterprise of another State in any case where it is not satisfied that **substantial ownership and effective control** are vested in nationals of a contracting State . . . .”

Like their predecessors, traditional and modern “Open Skies” bilaterals require that “substantial ownership and effective control” be vested in the nationals of the State designating the airline, and that failure to meet this requirement would entitle either State to revoke, suspend or limit the operations of the offending airline.

# Bermuda I: CAPACITY

Bermuda I-type agreements left to the discretion of carriers the levels of capacity offered, although there were vague provisions requiring that:

- (a) air services should be closely related to traffic demand (in the 3<sup>rd</sup> and 4<sup>th</sup> Freedom markets);
- (b) there should be a “fair and equal opportunity” for the air carriers of the two States to operate over the designated routes; and
- (c) the "interest of the air carriers of the other government shall be taken into consideration so as not to affect unduly the services which the latter provides on all or part of the same route.”

Moreover, each nation enjoyed the right of *ex post facto* review of capacity.

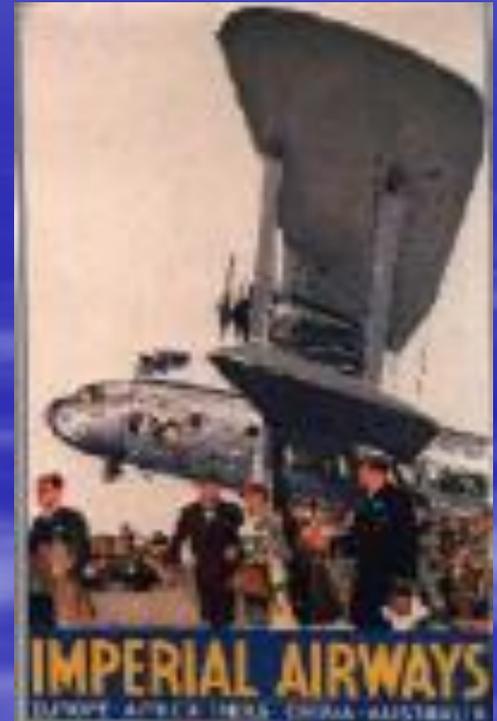
However, many non-US bilaterals provided for predetermination of capacity, measured by flight frequency or aircraft size.



# *Bermuda I: DISCRIMINATION*

*Bermuda I* specified that airport charges could be no higher than those imposed upon domestic airlines.

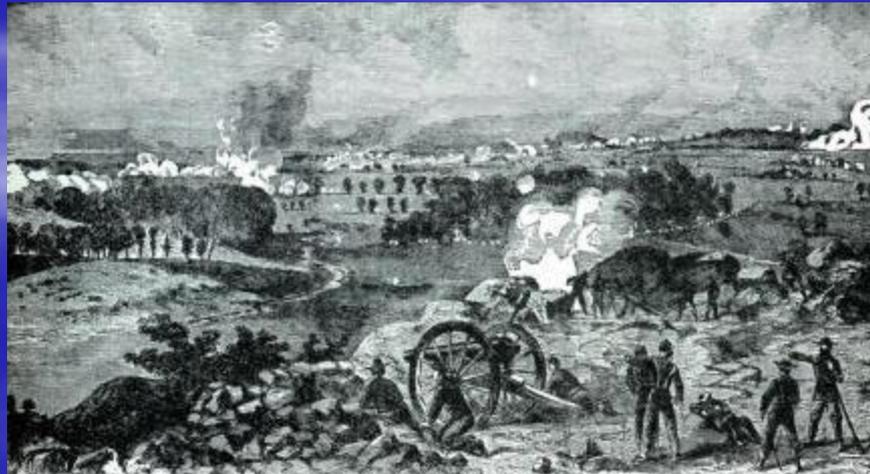
Taxes, customs duties, and inspection fees, imported fuel and spare parts would be accorded treatment not less favorable than that accorded like items brought in by domestic airlines.



# *Bermuda I: DISPUTE RESOLUTION*

*Bermuda I* called for consultations between the aggrieved governments, and reference to the ICAO for an advisory report. Later bilaterals called for arbitration.

Termination of the bilateral air transport agreement could be only upon one year's prior notice.

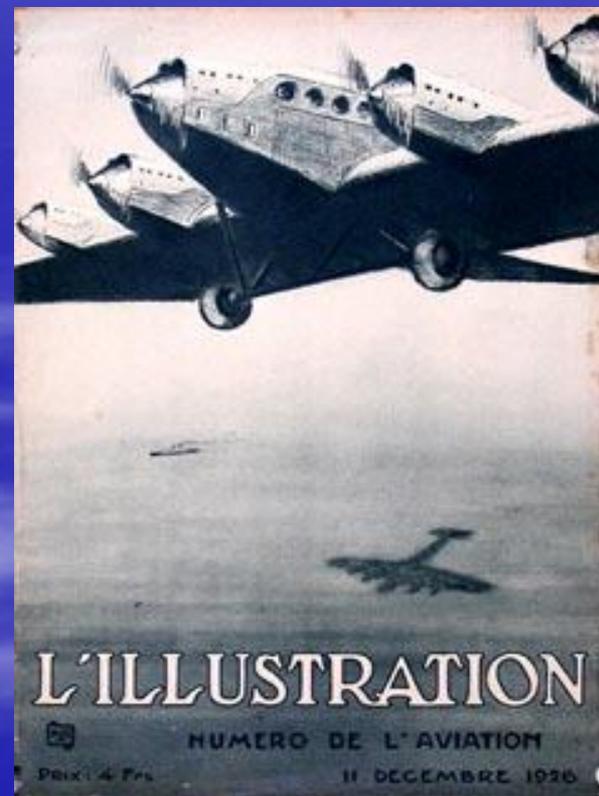


# *Bermuda I: RATES*

Rates were to be set initially by the airlines themselves, subject to prior approval by each of the governments involved upon 30-days notice

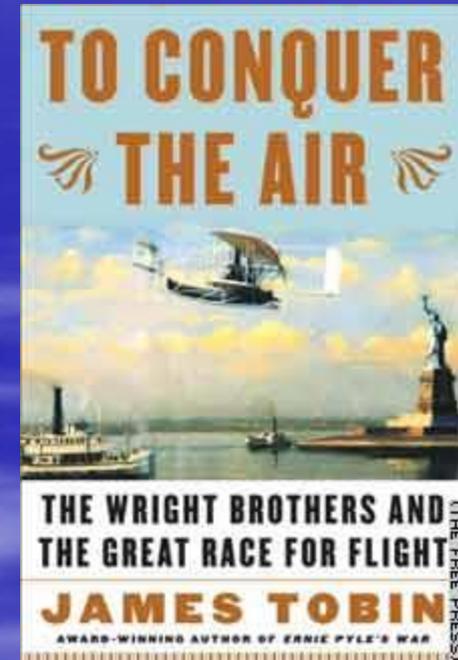
Rates would have to be "fair and economic" and, under domestic regulatory law, just and reasonable and nondiscriminatory.

Prior to 1960, most *Bermuda I*-type agreements contained an explicit endorsement of the IATA rate-making machinery



# Modern Bilateral Air Transport Agreements

- Entry (Carrier and Route Designation)
- Carrier Nationality
- Pricing
- Capacity/Frequency
- Discrimination/Fair Competition
- Dispute Resolution
- Security
- Cargo







# Open Skies Bilaterals

Beginning in 1978, the US began negotiating more liberal bilaterals, conferring “hard rights” to nations willing to liberalize.

In 1992, the US began negotiating even more liberal “open skies” bilaterals, and conferring upon the air carriers of States antitrust immunity for their alliances.



الهيئة العامة للطيران المدني  
CIVIL AVIATION AUTHORITY

# Open Skies Agreement

An agreement which devoid of a governmental interference of number of flights per week, capacity pricing and routes. In other words; entitles the air carrier to operate unlimited number of flights between its country and another country.



# Why Would a Country Embrace “Open Skies”

1. To enhance access by its “sixth freedom” carrier (e.g., Netherlands, Singapore, UAE, Qatar)
2. It is a tourist destination that wants more tanned foreigners on its beaches (e.g., Dominican Republic)
3. It has a large aircraft manufacturer that would like to sell more planes (e.g., Boeing, Airbus, Bombardier, Embraer)
4. It is ideologically wedded to neo-classical economics and doesn't care about the well being of its national airlines (e.g., US, EU)

# Open Skies

- 1992 - the United States concluded the first second generation “open skies” agreement with the Netherlands. It allowed KLM and any other Dutch carrier to fly to any point in the United States, and allowed U.S. carriers to fly to any point in the Netherlands, a country about the size of West Virginia. The U.S. was ideologically wedded to open markets, so the imbalance in traffic rights was of no concern. Moreover, opening up the Netherlands would allow KLM to drain traffic from surrounding airline networks, which would eventually encourage the surrounding airlines to ask their governments to sign “open skies” bilateral with the United States.
- 1993 - the U.S. conferred antitrust immunity on the Wings Alliance between Northwest Airlines and KLM. The encirclement policy began to corrode resistance to liberalization as the sixth freedom traffic drain began to grow; soon Lufthansa, then Air France, were asking their governments to sign liberal bilaterals.
- 1996 - Germany fell, followed by the Czech Republic, Italy, Portugal, the Slovak Republic, Malta, and Poland.
- 2001- the United States had concluded bilateral open skies agreements with 52 States and concluded its first multilateral open skies agreement with Brunei, Chile, New Zealand and Singapore.
- 2002 – France fell.
- 2007 - The U.S. and E.U. concluded a multilateral “open skies” traffic agreement that liberalized everything but foreign ownership and cabotage.
- 2010 – Japan fell.
- 2011 – cumulatively, the U.S. had signed “open skies” bilaterals with more than 100 States.



# US Initiatives

- 1977-78 U.S. Airline Deregulation
- 1978 First Generation “Open Skies” Bilaterals negotiated with Benelux Countries
- 1990 “Cities Program”
- 1992 *Second Generation Open Skies Bilateral negotiated with the Netherlands*
- 1993 Antitrust Immunity Granted to NW/KL
- 1995 *Open Skies Bilaterals with Switzerland, Finland, Denmark, Norway, Sweden*
- 1996 *Germany falls*
- 1997 *Singapore, Taiwan, Malaysia*
- 1998 *Korea*
- 1999 *U.A.E.*
- 2001 *France falls*
- 2005 *India*
- 2007 *Canada, Argentina*
- 2008 *US/EU ratify “Open Skies Plus”*

# OPEN SKIES

# OPEN SKIES BILATERALS:

- (1) Open entry on all routes;
- (2) Unrestricted capacity and frequency on all routes;
- (3) Unrestricted route and traffic rights, that is, the right to operate service between any point . . . including no restrictions as to intermediate and beyond points, change of gauge, routing flexibility, coterminalization, or the right to carry Fifth Freedom traffic;
- (4) Double-disapproval pricing in Third and Fourth Freedom markets;
- (5) Liberal charter arrangement (the least restrictive charter regulations of the two governments would apply, regardless of the origin of the flight);
- (6) Liberal cargo regime (criteria as comprehensive as those defined for the combination carriers);
- (7) Conversion and remittance arrangement (carriers would be able to convert earnings and remit in hard currency promptly and without restriction);
- (8) Open code-sharing opportunities;
- (9) Self-handling provisions (right of a carrier to perform/control its airport functions going to support its operations);
- (10) Procompetitive provisions on commercial opportunities, user charges, fair competition and intermodal rights; and
- (11) Explicit commitment for nondiscriminatory operation of and access for computer reservation systems.

- **Free Market Competition**  
No restrictions on international route rights; number of designated airlines; capacity; frequencies; or types of aircraft.
- **Pricing Determined by Market Forces**  
A fare can be disallowed only if both governments concur -- "double-disapproval pricing" -- and only for certain, specified reasons intended to ensure competition.
- **Doing Business Protections**  
For example:
  - All carriers of both countries may establish sales offices in the other State, and convert earnings and remit them in hard currency promptly and without restrictions.
  - Carriers are free to provide their own ground-handling services -- "self handling" -- or choose among competing providers. Airlines and cargo consolidators may arrange ground transport of air cargo and are guaranteed access to customs services.
  - User charges are non-discriminatory and based on costs.
- **Cooperative Marketing Arrangements**  
Airlines may enter into code-sharing or leasing arrangements with airlines of either State, or with those of third countries. An optional provision authorizes code-sharing between airlines and surface transportation companies.
- **Provisions for Consultation and Arbitration**  
Model text includes procedures for resolving differences that arise under the agreement.
- **Liberal Charter Arrangements**  
Carriers may choose to operate under the charter regulations of either State.
- **Safety and Security**  
Each government agrees to observe high standards of aviation safety and security, and to render assistance to the other in certain circumstances.
- **Optional 7th Freedom All-Cargo Rights**  
Provides authority for an airline of one State to operate all-cargo services between the other State and a third State, via flights that are not linked to its homeland. (source: US Dep't of State)

# Article 4: Revocation of Authorization

- 1. Either Party may revoke, suspend, limit, or impose conditions on the operating authorizations or technical permissions of an airline where:
  - a. that airline is not an airline of the other Party . . . ;
  - b. substantial ownership and effective control of that airline are not vested in the other Party, the other Party's nationals, or both; or
  - c. that airline has failed to comply with the laws and regulations . . . of this Agreement.



# Article 6: Safety

- 1. Each Party shall recognize as valid, for the purpose of operating the air transportation provided for in this Agreement, certificates of airworthiness, certificates of competency, and licenses issued or validated by the other Party and still in force, provided that the requirements for such certificates or licenses at least equal the minimum standards that may be established pursuant to the Convention. . . .



# Article 6: Safety

- 2. Either Party may request consultations concerning the safety standards maintained by the other Party relating to aeronautical facilities, aircrews, aircraft, and operation of airlines of that other Party. If, following such consultations, one Party finds that the other Party does not effectively maintain and administer safety standards and requirements in these areas that at least equal the minimum standards that may be established pursuant to the Convention, the other Party shall be notified of such findings and the steps considered necessary to conform with these minimum standards, and the other Party shall take appropriate corrective action. Each Party reserves the right to withhold, revoke, suspend, limit, or impose conditions on the operating authorization or technical permission of an airline or airlines of the other Party in the event the other Party does not take such appropriate corrective action within a reasonable time . . . .

# Article 7: Aviation Security

- 1. The Parties affirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. . . . [T]he Parties shall in particular act in conformity with the provisions of the [Tokyo, Hague, Montreal Convention and Montreal Protocol]. . . .
- 2. The Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, of their passengers and crew, and of airports and air navigation facilities, and to address any other threat to the security of civil air navigation.
- 3. The Parties shall, in their mutual relations, act in conformity with the aviation security standards and appropriate recommended practices established by [ICAO] . . . .

# Article 7: Aviation Security

- 6. When a Party has reasonable grounds to believe that the other Party has departed from the aviation security provisions of this Article, the aeronautical authorities of that Party may request immediate consultations with the aeronautical authorities of the other Party. Failure to reach a satisfactory agreement within 15 days from the date of such request shall constitute grounds to withhold, revoke, suspend, limit, or impose conditions on the operating authorization and technical permissions of an airline or airlines of that Party. . . .

# Article 7: Aviation Security

- 6. When a Party has reasonable grounds to believe that the other Party has departed from the aviation security provisions of this Article, the aeronautical authorities of that Party may request immediate consultations with the aeronautical authorities of the other Party. Failure to reach a satisfactory agreement within 15 days from the date of such request shall constitute grounds to withhold, revoke, suspend, limit, or impose conditions on the operating authorization and technical permissions of an airline or airlines of that Party. . . .

# Article 11: Fair Competition

- 
- 1. Each Party shall allow a fair and equal opportunity for the airlines of both Parties to compete in providing the international air transportation governed by this Agreement.
  - 2. Each Party shall allow each airline to determine the frequency and capacity of the international air transportation it offers based upon commercial considerations in the marketplace. . . .

# Article 12: Pricing



- 1. Each Party shall allow prices for air transportation to be established by airlines of both Parties based upon commercial considerations in the marketplace . . . .

# Article 13: Consultations

- Either Party may, at any time, request consultations relating to this Agreement. Such consultations shall begin at the earliest possible date, but not later than 60 days from the date the other Party receives the request unless otherwise agreed.



# Article 14: Settlement of Disputes

- 1. Any dispute arising under this Agreement, except those that may arise under Article 12 (Pricing), that is not resolved within 30 days of the date established for consultations pursuant to a request for consultations under Article 13 may be referred, by agreement of the Parties, for decision to some person or body. If the Parties do not so agree, either Party may give written notice to the other Party through diplomatic channels that it is requesting that the dispute be submitted to arbitration.
- 2. Arbitration shall be by a tribunal of three arbitrators . . . .



# Article 15: Termination





# Open Skies Bilaterals

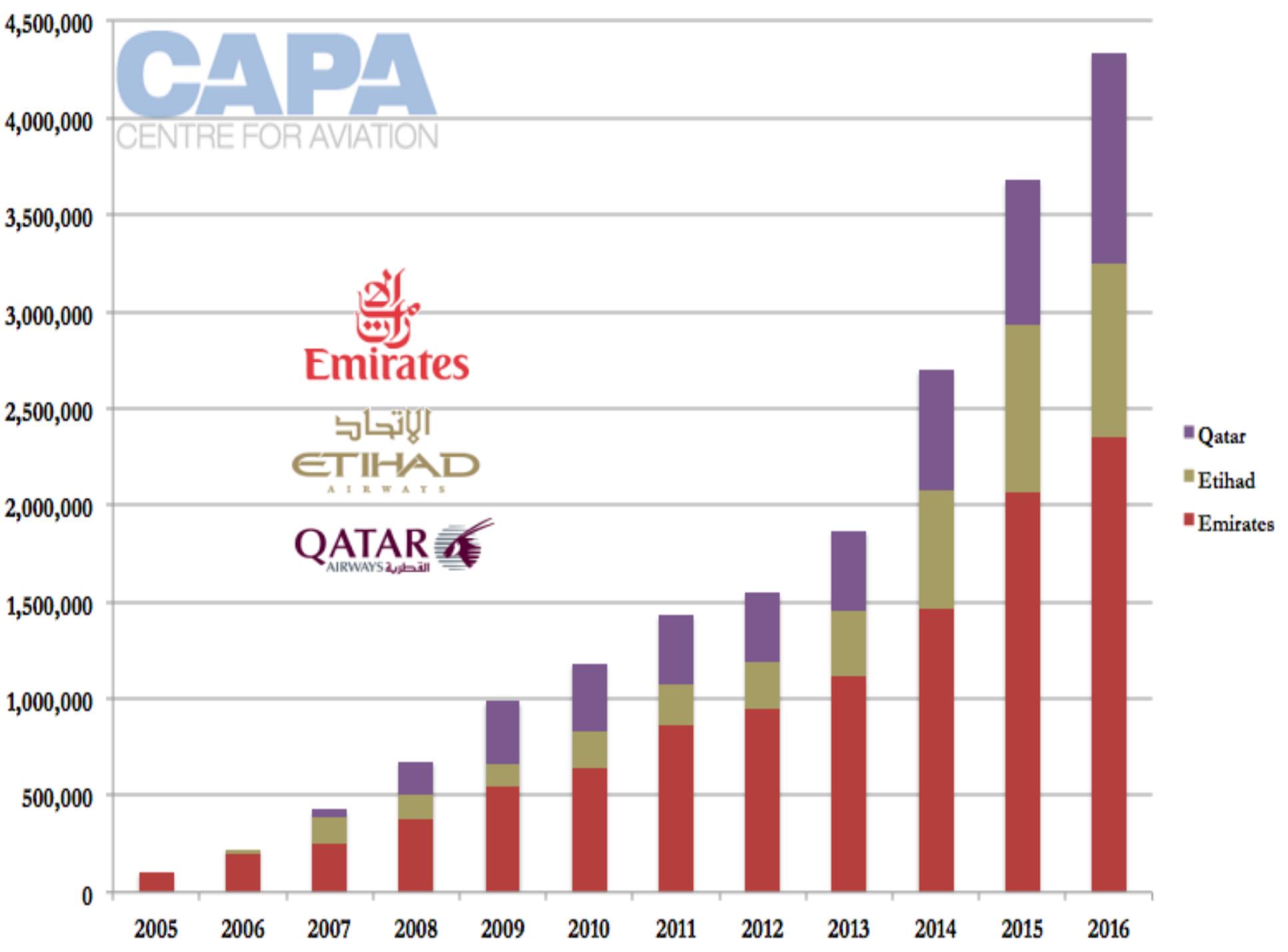
- By 2008, the US had concluded bilateral air transport agreements with 114 States, of which, 73 were “Open Skies” bilaterals.
- By 2009, the US had concluded 94 “Open Skies” bilaterals.
- By 2012, 107 open skies bilaterals.
- By 2016, 120 open skies bilaterals.

|                     |                         |                               |                       |  |
|---------------------|-------------------------|-------------------------------|-----------------------|--|
| US OPEN SKIES       | 25. Chile               | 51. Qatar                     | 76. Canada            | 102. Saudi Arabia                        |
| AGREEMENTS:         | 26. Uzbekistan          | 52. *France                   | 77. *Bulgaria         | 103. Macedonia                           |
| 1. *Netherlands     | 27. Korea               | 53. Sri Lanka                 | 78. *Cyprus           | 104. St. Kitts                           |
| 2. *Belgium         | 28. Peru                | 54. Uganda                    | 79. *Estonia          | 105. Montenegro                          |
| 3. *Finland         | 29. Netherland Antilles | 55. Cape Verde                | 80. *Greece           | 106. Suriname                            |
| 4. *Denmark         | 30. *Romania            | 56. Samoa                     | 81. *Hungary          | 107. Sierra Leone                        |
| 5. Norway           | 31. *Italy              | 57. Jamaica                   | 82. *Ireland          | 108. Macedonia                           |
| 6. *Sweden          | 32. U.A.E.              | 58. Tonga                     | 83. *Latvia           | 109. Seychelles                          |
| 7. *Luxembourg      | 33. Pakistan            | 59. Albania                   | 84. *Lithuania        | 110. Yemen                               |
| 8. *Austria         | 34. Bahrain             | 60. Madagascar                | 85. *Slovenia         | 111. Guyana                              |
| 9. Iceland          | 35. Tanzania            | 61. Gabon                     | 86. *Spain            | 112. Bangladesh                          |
| 10. *Czech Republic | 36. *Portugal           | 62. Indonesia                 | 87. *United Kingdom   | 113. Botswana                            |
| 11. *Germany        | 37. *Slovak Republic    | 63. Uruguay                   | 88. Georgia           | 114. Equatorial<br>Guinea                |
| 12. Jordan          | 38. Namibia             | 64. India                     | 89. Australia         | 115. Togo                                |
| 13. Singapore       | 39. Burkina Faso        | 65. Paraguay                  | 90. Kenya             | 116. Serbia                              |
| 14. Taiwan          | 40. Turkey              | 66. Maldives                  | 91. Laos              | 117. Ukraine                             |
| 15. Costa Rica      | 41. Gambia              | 67. Ethiopia                  | 92. Armenia           | 118. Cote d'Ivoire                       |
| 16. El Salvador     | 42. Nigeria             | 68. Thailand                  | 93. Zambia            | 119. Azerbaijan                          |
| 17. Guatemala       | 43. Morocco             | 69. Mali                      | 94. Trinidad & Tobago | 120. Curacao                             |
| 18. Honduras        | 44. Ghana               | 70. Bosnia and<br>Herzegovina | 95. Switzerland       | 121. Saint Vincent and<br>the Grenadines |
| 19. Nicaragua       | 45. Rwanda              | 71. Cameroon                  | 96. Japan             | As of 7 April 2017                       |
| 20. Panama          | 46. *Malta              | 72. Cook Islands              | 97. Croatia**         |  |
| 21. New Zealand     | 47. Benin               | 73. Chad                      | 98. Israel**          |  |
| 22. Brunei          | 48. Senegal             | 74. Kuwait                    | 99. Barbados**        |  |
| 23. Malaysia        | 49. *Poland             | 75. Liberia                   | 100. Colombia**       |  |
| 24. Aruba           | 50. Oman                |                               | 101. Brazil           |  |

| <b>ASIA</b> | <b>OPEN SKIES AGREEMENTS</b> |                            |
|-------------|------------------------------|----------------------------|
| <b>Year</b> | <b>Entity</b>                | <b>Total # Open Skies*</b> |
| 2013        | Bangladesh                   | 112                        |
| 2010        | Japan                        | 99                         |
| 2008        | Laos                         | 94                         |
| 2005        | Maldives                     | 67                         |
| 2005        | India                        | 65                         |
| 2004        | Indonesia                    | 63                         |
| 2001        | Sri Lanka                    | 56                         |
| 1999        | Pakistan                     | 33                         |
| 1998        | Korea                        | 30                         |
| 1998        | Malaysia                     | 24                         |
| 1997        | Taiwan                       | 16                         |
| 1997        | Brunei                       | 15                         |
| 1997        | Singapore                    | 14                         |

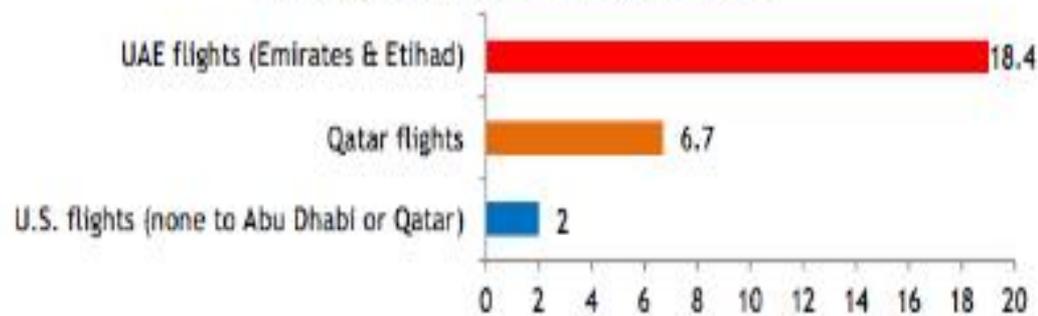


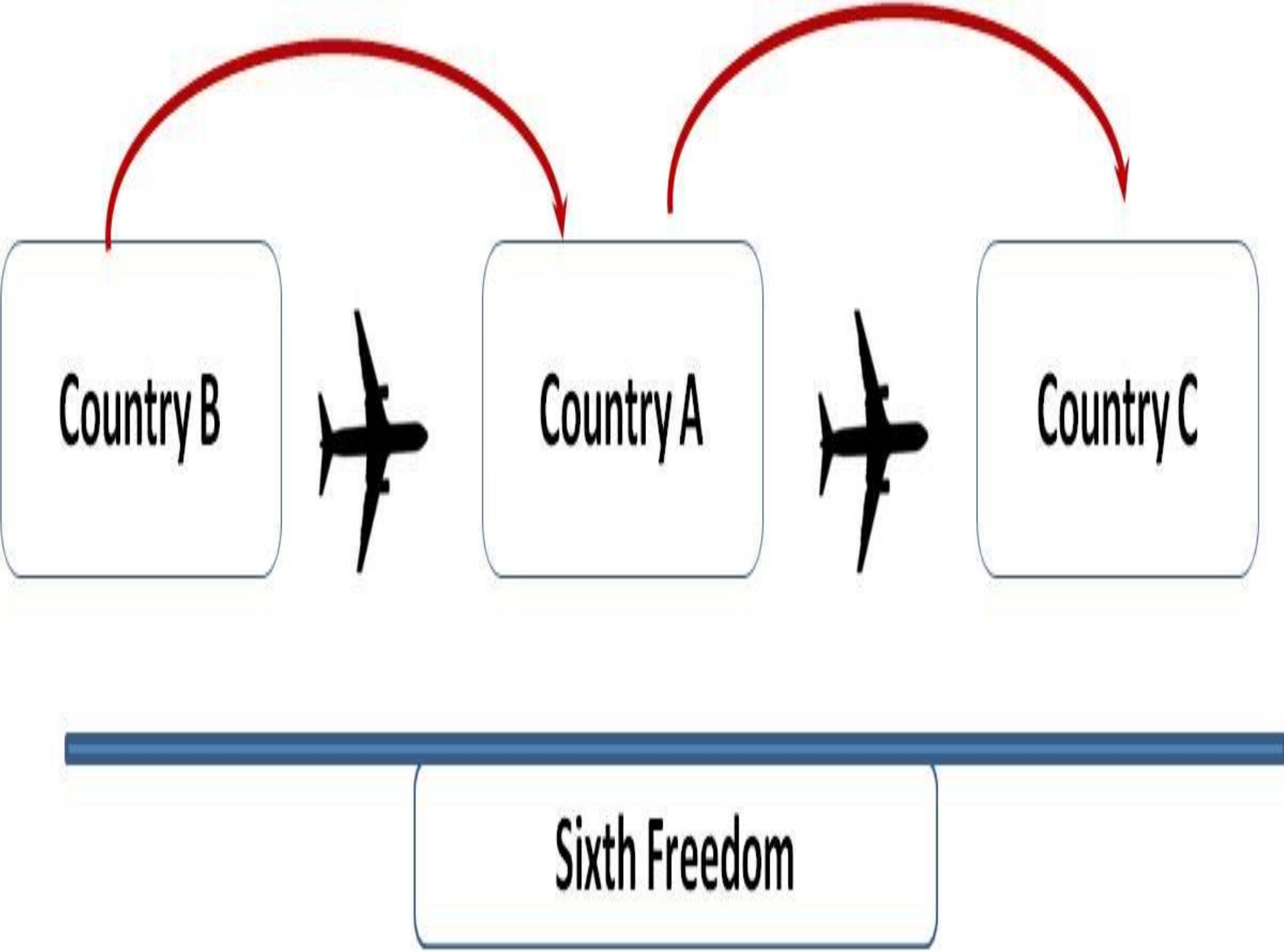
■ Qatar  
■ Etihad  
■ Emirates





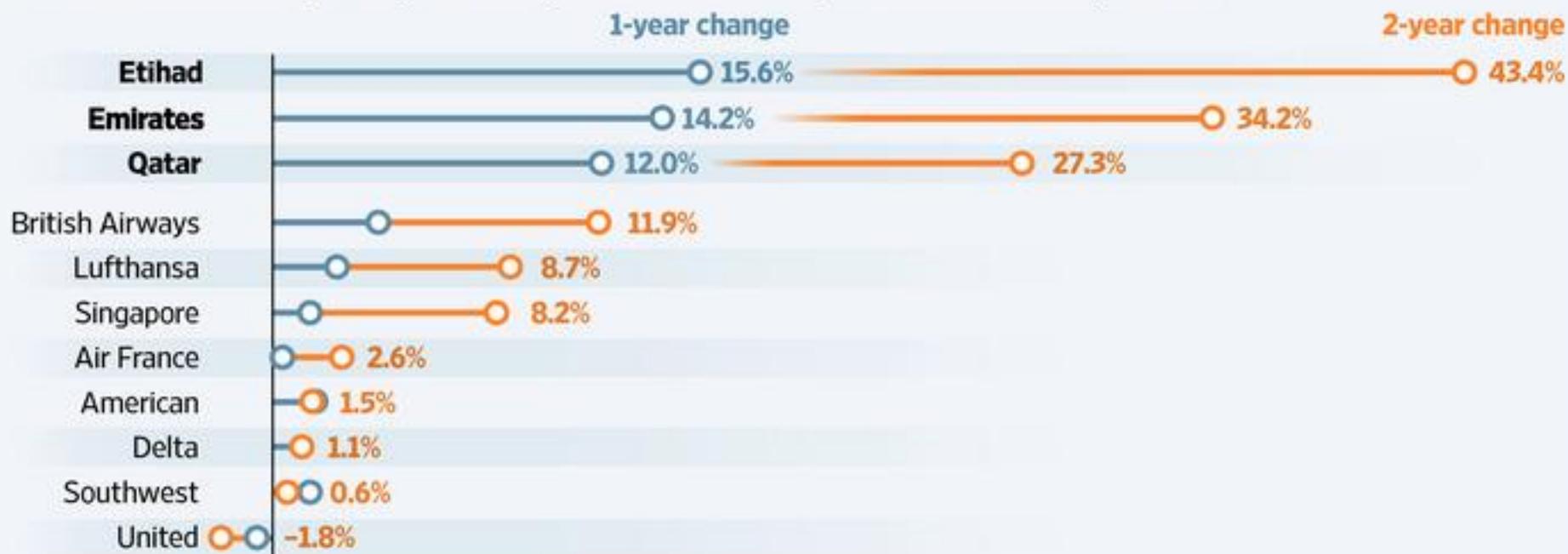
Average Daily Roundtrips (Apr. 2015)<sup>2</sup>





# Gulf Growth

Persian Gulf airlines have been among the fastest-growing in the world. Here's a look at their passenger traffic growth in 2014 compared with other major airlines.



Note: Passenger traffic measured in revenue passenger miles in August each year. A revenue passenger mile is one passenger flown one mile.

Source: Airline Business World Airline Rankings

The Wall Street Journal



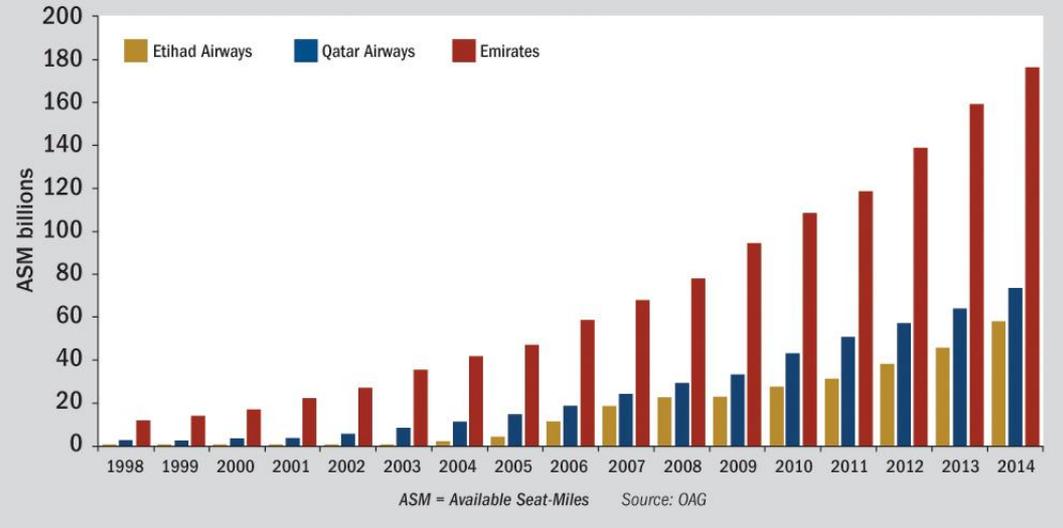
“American, Delta and United say they are pleased the State Department will conduct informal discussions with Qatar and the UAE regarding subsidies of \$50 billion to three Mideast airlines. . . . After a year and a half of lobbying, the airlines and unions are pointing to scheduled meetings -- with the UAE on July 18 and 19 and with Qatar on July 25 -- as a sign of progress. ....This year the three Gulf carriers will offer 32 daily flights to the U.S., up from six flights in 2008, Delta said. Currently, Emirates serves 10 U.S. cities, Qatar serves eight and Etihad serves six.” Source: Ted Reed, The Street, July 29, 2016.

# April 2015 Letter Signed by 260 US Congressmen to DOS and DOT

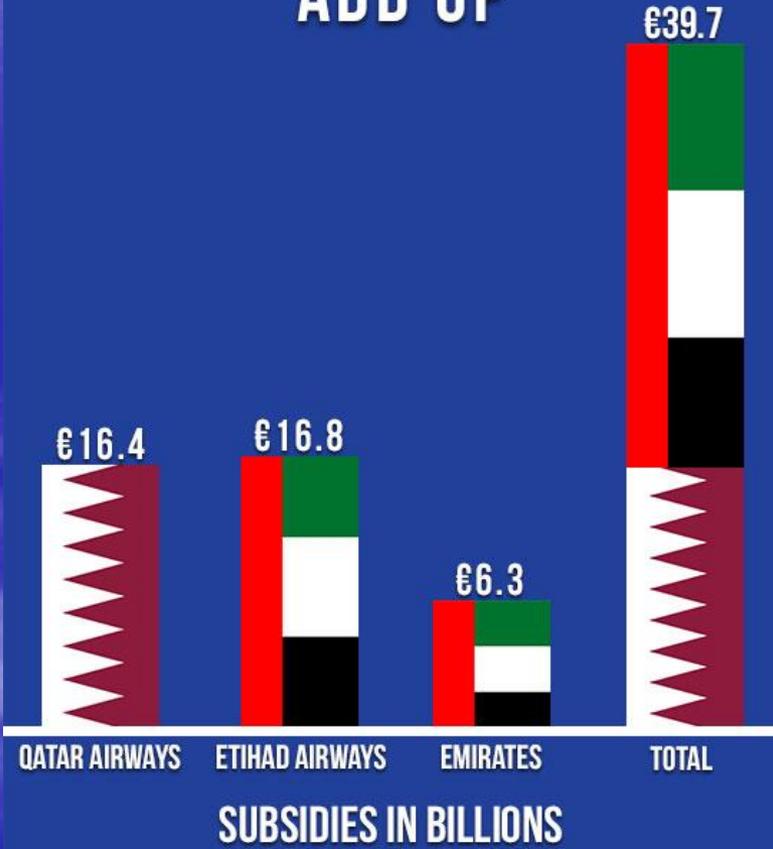
- The US should “seek consultations with the governments of Qatar and the [UAE] in an effort to stem the tide of subsidized capacity that their state-owned airlines are deploying on international routes to the United States . . . . [O]ver the past decade, the governments of Qatar and the UAE have granted over \$40 billion in concealed subsidies [which] have taken a wide variety of forms, such as direct cash injections, interest free loans with no payment obligations, shareholder advances, significant related party transactions not at arm’s-length, and subsidized infrastructure, as well as other unfair business practices, such as bans on unions.”



### Growth of Gulf Airlines

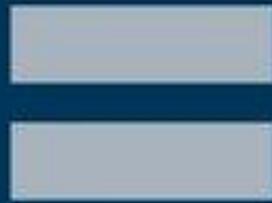


### THE GULF SUBSIDIES ADD UP



SOURCE: STUDY CONDUCTED BY US AIRLINES UNITED, DELTA AND AMERICAN AIRLINES

# THE COST OF UNFAIR AIRLINE SUBSIDIES



Every lost international roundtrip route by U.S. carriers due to **unfairly subsidized competition**...

...equals a **net loss** of more than 800 U.S. Jobs

# U.S. airlines plan appeal to Trump for protection against foreign competition.

- “We look forward to briefing President-elect Donald Trump and his new administration on the massive, unfair subsidies that the UAE and Qatar give to their state-owned Gulf carriers,” said Jill Zuckman, spokeswoman for the Partnership for Open and Fair Skies. “The Gulf carrier subsidies threaten the jobs of 300,000 U.S. aviation workers and the American aviation industry as a whole, and we are optimistic that the Trump administration will stand up to the UAE and Qatar, enforce our trade agreements and fight for American jobs.”

Hello Tomorrow



**Emirates doesn't receive government subsidies.  
But we do receive consistently high satisfaction ratings.  
Could that be the reason for our success?**

learn more at [emirates.com/openskies](https://www.emirates.com/openskies)

This is a paid advertisement sponsored by Emirates Airline. The advertising space is a designated public forum and does not imply WMATA's endorsement of any views expressed.

Hello Tomorrow



**At Delta, United and American, profits are going up.  
Customer satisfaction remains low.**

Sound like a good trade-off to you?

learn more at [emirates.com/openskies](https://www.emirates.com/openskies)

This is a paid advertisement sponsored by Emirates Airline. The advertising space is a designated public forum and does not imply WMATA's endorsement of any views expressed.

Hello Tomorrow



**Emirates connects more of America to more  
of the world and supports over 400,000 American jobs.  
Isn't that a win-win situation?**

learn more at [emirates.com/openskies](https://www.emirates.com/openskies)

This is a paid advertisement sponsored by Emirates Airline. The advertising space is a designated public forum and does not imply WMATA's endorsement of any views expressed.

Hello Tomorrow



**Emirates offers one-stop service to 57 destinations  
across Africa, the Middle East, and Asia  
that aren't served by any American carriers.  
Shouldn't you have the option to fly there?**

learn more at [emirates.com/openskies](https://www.emirates.com/openskies)

This is a paid advertisement sponsored by Emirates Airline. The advertising space is a designated public forum and does not imply WMATA's endorsement of any views expressed.

# Enlightened Leadership: The UAE

- “We want the UAE to sustain its drive toward economic diversification, as this is the nation’s surest path to sustainable development in a future that is less reliant on oil. This means expanding new strategic sectors to channel our energies into industries and services where we can build a long-term competitive advantage”

## *UAE Vision 2021*

- “This contribution is projected to grow further in the coming years and as such justifies the country’s huge investment in airports and airline networks. Aviation and logistics have had a major impact on other economic sectors such as tourism, hospitality, trade and finance, and activity in one spurs growth in the others. [...] At present, the aviation sector contributes nearly \$22 billion, or 28 per cent of Dubai’s gross domestic product, it also plays a key role in diversifying the Emirate’s economy”

*Shaikh Ahmad Bin Saeed Al Maktoum, President of Dubai Civil Aviation Authority, Chairman and Chief Executive of Emirates Group and Chairman of Dubai Airports*



## Executive summary: quantifiable benefits to US airlines

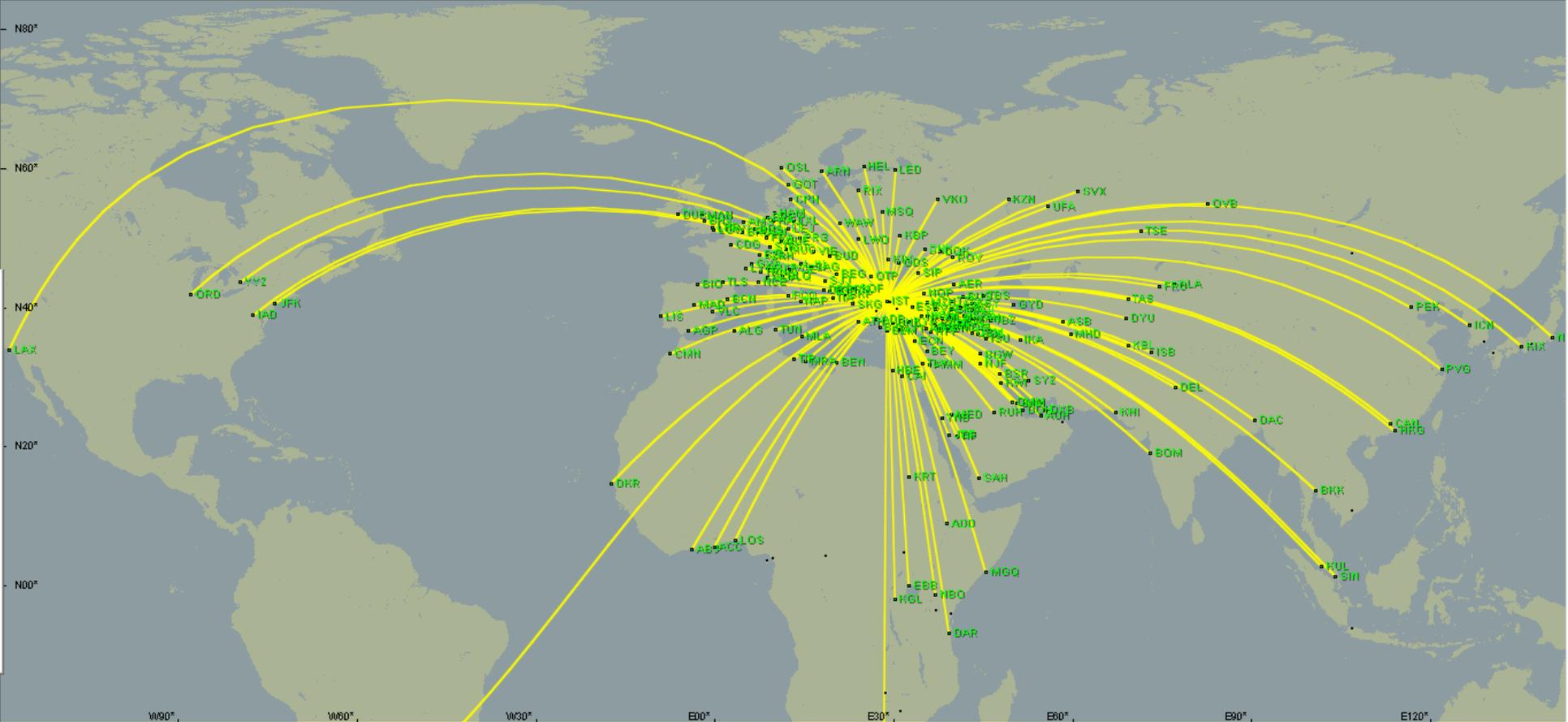
We have identified the following quantifiable benefits to United Airlines, Delta Air Lines and American Airlines:

|  |                                      | United Airlines   | Delta Air Lines   | American Airlines | Total             |
|--|--------------------------------------|-------------------|-------------------|-------------------|-------------------|
| Bankruptcy debt relief                   | One time cost savings                | \$26.0 bn         | \$4.6 bn          | \$0.36 bn         | \$30.96 bn        |
|  | Recurring <u>annual</u> cost savings | N/A               | \$3.3 bn          | \$1.2 bn          | \$4.5 bn          |
| Pension termination <sup>1</sup>         | Government guarantees (PBGC)         | \$13.6 bn         | \$3.46 bn         | \$6.02 bn         | \$23.08 bn        |
|  | Cost to participants                 | \$3.2 bn          | \$1.09 bn         | \$2.06 bn         | \$6.35 bn         |
| Fuel subsidies (estimated)               |                                      | \$1.6 bn          | \$1.7 bn          | \$2.3 bn          | \$5.6 bn          |
| Other subsidies & preferential financing |                                      | \$6.3 mn          | \$868 mn          | \$112 mn          | \$0.99 bn         |
| <b>Grand total</b>                       |                                      | <b>\$44.41 bn</b> | <b>\$15.02 bn</b> | <b>\$12.05 bn</b> | <b>\$71.48 bn</b> |

Of the \$71.48 bn, more than \$70 bn relates to the period since 2000.

# Business Travel Coalition

- “The Big 3 claim that Gulf Carrier success is harming them and killing aviation jobs. However, it is the Big 3 that is outsourcing their own employees’ sustainable, middle-class jobs.
- “When the Big 3 transfers a flight to an antitrust immunized alliance partner (e.g., Delta giving U.S. flights to Virgin Atlantic or Air France) high-paying U.S. jobs are lost. Using their own number, 1,500 jobs are lost for every Big 3 flight abandoned. . . .
- “When the Big 3 transfers a flight to an antitrust immunized alliance partner (e.g., Delta giving U.S. flights to Virgin Atlantic or Air France) high-paying U.S. jobs are lost. Using their own number, 1,500 jobs are lost for every Big 3 flight abandoned.
- “Indeed, when the Big 3 does order aircraft, it appears they are more often choosing Airbus. For example, Delta in 2014 placed an order for Airbus widebodies with a market value of \$14.3 billion dollars foreclosing on support for more than 80,000 high-paying American middle-class jobs. According to the Department of Commerce, every \$1 billion dollars in U.S. aerospace manufacturing creates or supports 5,747 U.S. jobs . . . .”



# Canada's Policies on Negotiation



Canada's principal goals when negotiating air agreements are to:

- Provide a framework that encourages competition and the development of new and expanded international air services to benefit travellers, shippers, and the tourism and business sectors.
- Provide opportunities for Canadian airlines to grow and compete successfully in a more liberalized global environment.
- Enable airports to market themselves in a manner that is unhindered by bilateral constraints to the greatest extent possible.
- Support and facilitate Canada's international trade objectives.
- Support a safe, secure, efficient, economically healthy and viable Canadian air transportation industry.

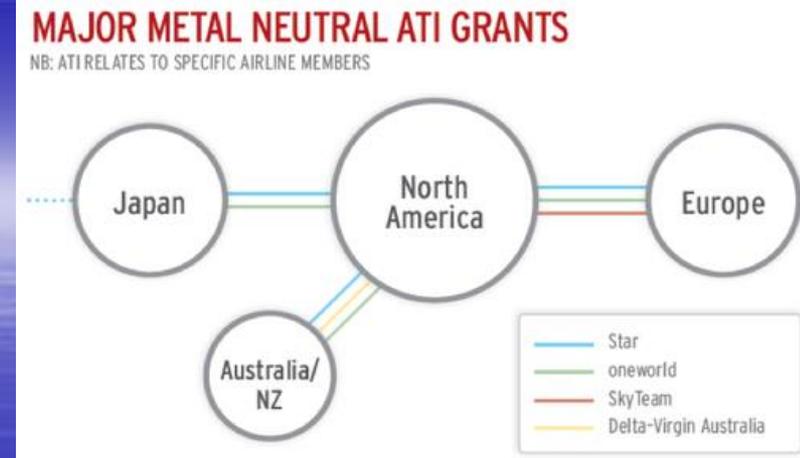
Source: <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/facts-air-eclair.aspx?view=d>

# Antitrust Immunity Conferred by USDOT to:

- American-CAI
- American-British Airways
- American-Finnair
- American-LAN Chile
- American-Sabena-Swissair
- American-TACA Group
- American-Swiss Int'l Air Lines
- Continental-COPA
- Delta-Austrian-Sabena-Swissair
- Delta-Air France-Alitalia-Czech Airlines
- Delta-Korean Air Lines-Air France-Alitalia-Czech Airlines
- Northwest-KLM
- Northwest-KLM-Alitalia
- Northwest-Malaysia
- United-Asiana Airlines
- United-Lufthansa
- United-Lufthansa-SAS
- United-Austrian-Lauda-Lufthansa-SAS
- United-British Midland-Austrian-Lauda-Lufthansa-SAS
- United-Air Canada
- United-Air New Zealand
- SAS-Icelandair



# Metal Neutral Joint Ventures



By 2010, the highest levels of integration under antitrust immunity in “metal neutral” joint ventures had been achieved by the following airlines:

- Air Canada, Lufthansa, United-Continental
- Air France-KLM, Alitalia, Delta
- American, British Airways, Iberia

■ European Commission & U.S. Dept of Transportation, *Transatlantic Airline Alliances: Competitive Issues and Regulatory Approaches* 7 (2010).

## ALLIANCE MEMBERS WITH ‘HIGH LEVEL COOPERATION’: THE BRIGHTEST PART OF THE SPECTRUM

| STAR               | ONEWORLD          | SKYTEAM        |
|--------------------|-------------------|----------------|
| Air Canada         | American Airlines | Air France-KLM |
| Lufthansa          | British Airways   | Alitalia       |
| United-Continental | Iberia            | Delta          |

# Hierarchy of Inter-carrier Agreements

Interlining:  
T&B and  
Joint Fare  
Agreements

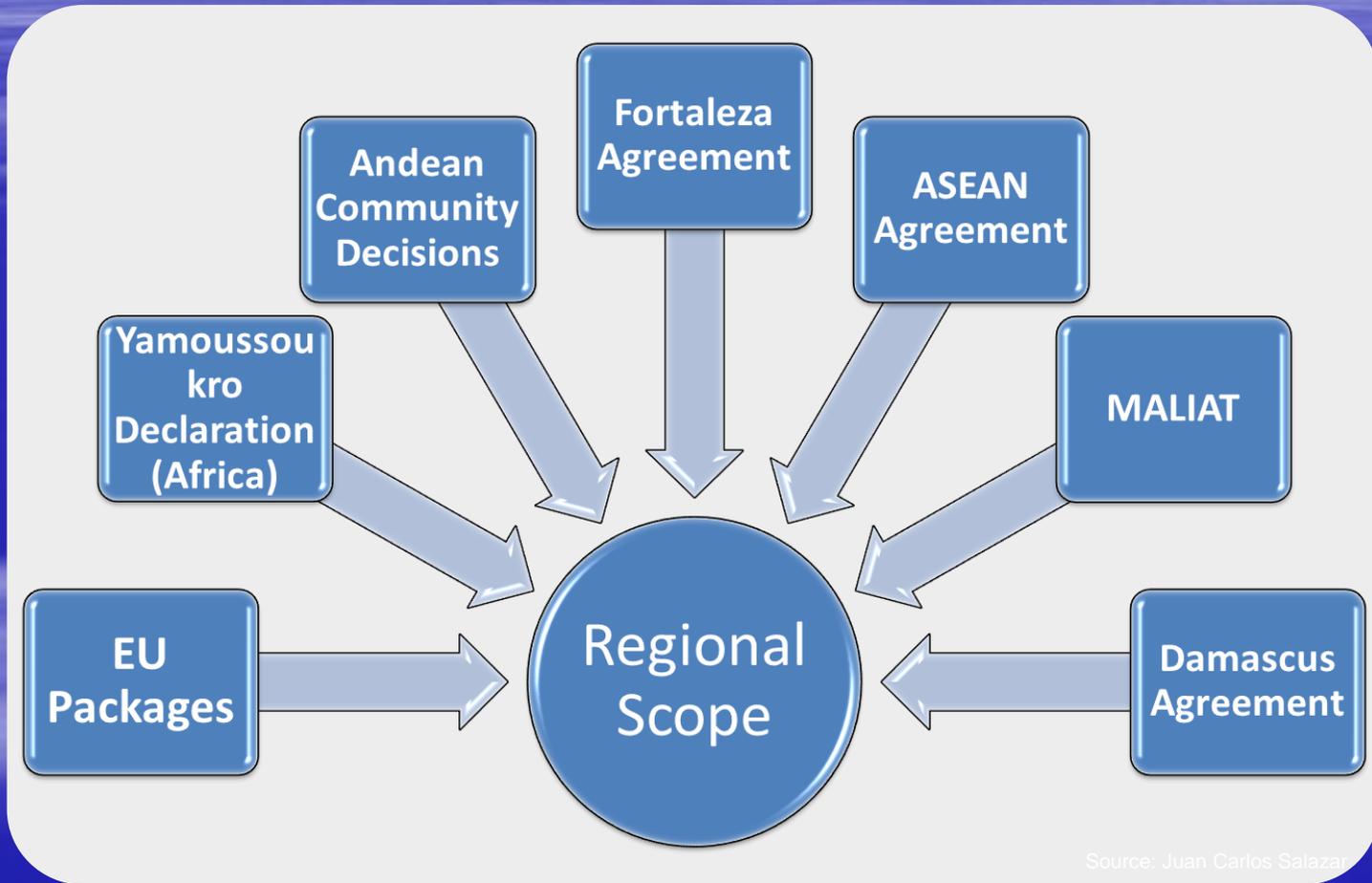
Frequent Flyer  
Program  
Agreements

Code-  
Sharing

Coordination  
of Prices and  
Schedules

Revenue &  
Profit-  
Sharing  
Joint  
Venture

# Regional Liberalization Agreements



# The MALIAT Accord



- In 2001, the US and four Pacific-rim countries (Brunei, Chile, New Zealand and Singapore) concluded the APEC Agreement (also known as “The Multilateral Agreement on the Liberalization of International Air Transport,” [MALIAT], or the “Kona Accord”).
- MALIAT permits unrestricted services by the airlines of the countries involved to, from and beyond the others' territories, without prescribing where carriers fly, the number of flights they operate and the prices they charge.
- Despite the fact that the MALIAT agreement is open for ratification by other States, they have not been beating down the doors to sign. In addition to the original signatories, Samoa, Tonga and Peru joined in 2004, and then Peru withdrew the following year. Mongolia subsequently joined.

# THE YAMOUSSOUKRO DECISION

- In 1988, African Ministers met in Yamoussoukro, Ivory Coast, to consider liberalization of air transport policy on a multilateral basis.
- After a series of meetings, they announced the “Yamoussoukro Decision” in 1999, and it was formally adopted by the African Union in 2000; it formally came into force in December 2003.
- The West African Economic and Monetary Union adopted a multilateral agreement for its eight member states (i.e., Benin, Burkina Faso, Ivory Coast, Guinea-Bissau, Mali, Niger, Senegal and Toga) implementing the Yamoussoukro Decision.



## MALIAT ACCORD AND YAMO USSOUKRO DECISION

| <i>Provision</i>    | <i>MALIAT</i>   | <i>Yamoussoukro</i>  |
|---------------------|---|--|
| Routes              | Open Routes   | Open Routes  |
|                     | Open Traffic Rights including Seventh Freedom Cargo   | Open First, Second, Third, Fourth and Fifth Freedom Routes                                 |
| Capacity            | Open Capacity and Frequency   | Open Capacity and Frequency  |
| Operations          | Operational Flexibility, including Change of Gauge, Aircraft Type, Co-terminalization, and International Rights | No provision   |
| Airline Designation | Unlimited   | At least one airline (but can be from another State party) or African multilateral airline |
| Code Sharing        | Unlimited   | No provision   |
| Pricing             | Open pricing and minimal tariff filing  | No approval required, but 30 days prior filing (except for price decreases)                |

# European Union Initiatives

- 1987 and 1990: the first and second ‘packages’ began liberalization of air transport;
- 1992: Third package of liberalization created the European Single Aviation Market, deregulating all routes (including cabotage) and rates for community carriers;
- 2001: European Court of Justice rules all bilaterals with preferences for flag carriers are unlawful under EU law; and
- 2008: EU/US conclude “Open Skies Plus” Agreement.

# U.S.-EU Air Transport Agreement – “Open Skies Plus”



The Agreement authorizes every U.S. and every EU airline (irrespective of flag) to:

- fly between every city in the European Union and every city in the United States; Norway and Iceland joined the agreement in 2011.
- operate without restriction on the number of flights, aircraft, and routes;
- set fares according to market demand; and
- enter into cooperative arrangements, including codesharing, franchising, and leasing.

# The “Plus”, Subject to Side Agreements

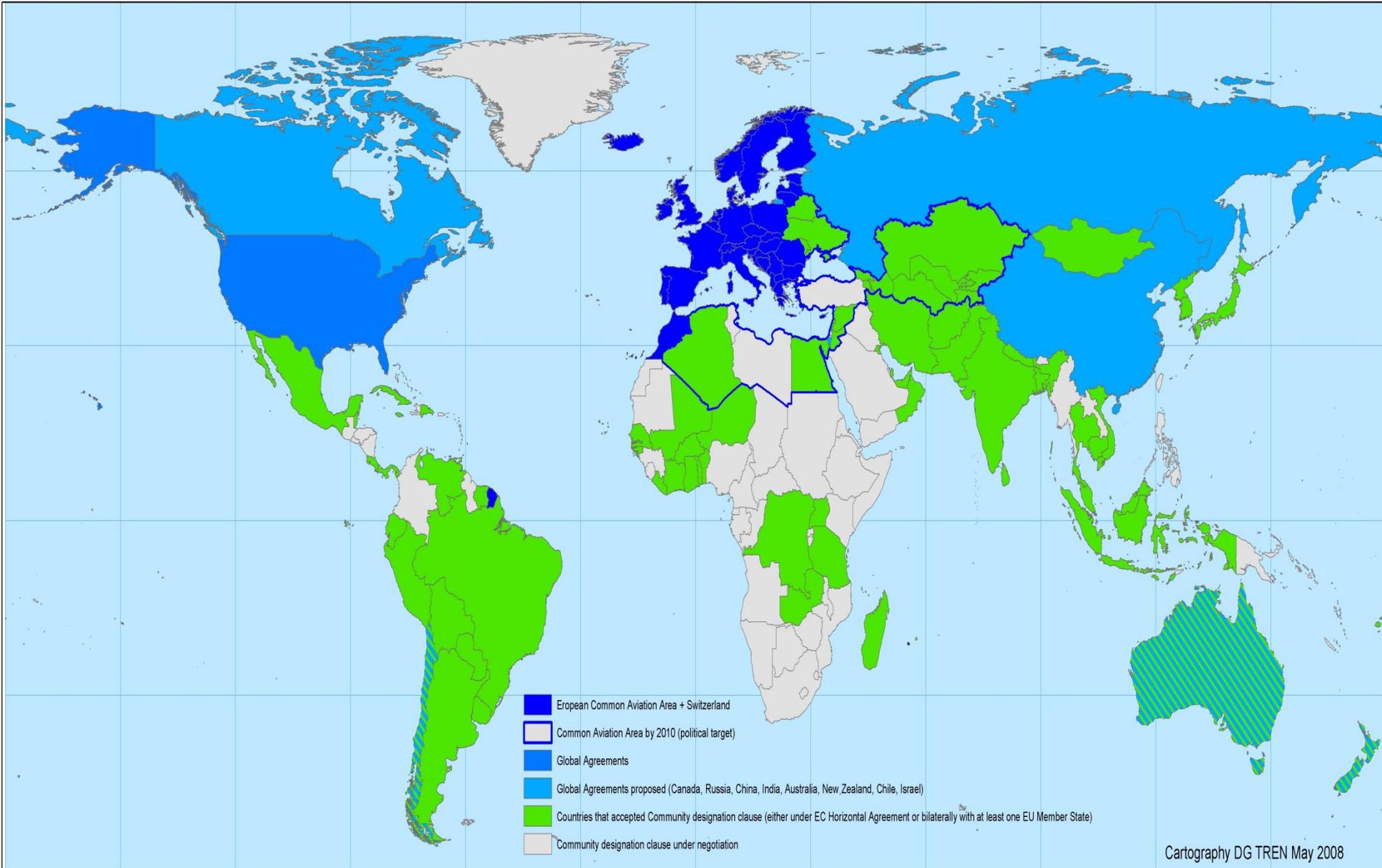


The Open Skies Plus framework of the Agreement would:

- Allow U.S. investors to invest in a European Community airline, so long as the airline is majority owned and effectively controlled by a member State and/or nationals of member States;
- Make clear that, under U.S. law, EU investors may hold up to 49.9 percent of the total equity in U.S. airlines, and on a case-by-case basis even more;
- Open the possibility for EU investors to own or control airlines from Switzerland, Lichtenstein, members of the European Common Aviation Area (ECAA), Kenya, and America’s Open Skies partners in Africa without putting at risk such airlines’ rights to operate to the United States; and,
- Grant new traffic rights to EU carriers that would open the door to cross-border airline mergers and acquisitions within the EU, which is possible today only if airlines are prepared to place their international operating rights in legal jeopardy.



# European Community Aviation Agreements



# New External Aviation Agreements

Requesting Member States for the authorisation to negotiate EU-level aviation agreements with several countries and regions in the world.



As of 2015

# US-Singapore Bilateral Safety Agreement

## ARTICLE I

**A The Parties agree:**

- 1. To facilitate acceptance by each Party of the other Party's (a) airworthiness approvals and environmental testing and approvals of civil aeronautical products, and (b) qualification evaluations of flight simulators;
- 2. To facilitate acceptance by the Parties of the approvals and monitoring of maintenance facilities and alteration or modification facilities, maintenance personnel, flight crew members, aviation training establishments, and flight operations of the other Party;
- 3. To provide for cooperation in sustaining an equivalent level of safety and environmental objectives with respect to aviation safety.





B. Each Party hereby designates its civil aviation authority as the executive agent to implement this Agreement. For the Government of the United States, the executive agent shall be the Federal Aviation Administration (FAA) of the Department of Transportation. For the Government of the Republic of Singapore, the executive agent shall be the Civil Aviation Authority of Singapore (CAAS).



## ARTICLE III

- A. The Parties' civil aviation authorities shall conduct technical assessments and work cooperatively to develop an understanding of each other's standards and systems in the following areas:
- 1. Airworthiness approvals of civil aeronautical products;
  - 2. Environmental approval and environmental testing;
  - 3. Approval and monitoring of maintenance facilities and maintenance personnel;
  - 4. Approval and monitoring of flight operations and flight crew members;
  - 5. Evaluation and qualification of flight simulators; and
  - 6. Approval and monitoring of aviation training establishments.



B. When the civil aviation authorities of the Parties agree that the standards, rules, practices, procedures, and systems of both Parties in one of the technical specialties listed in paragraph (A) of this Article are sufficiently equivalent or compatible to permit acceptance of findings of compliance made by one Party for the other Party to the agreed-upon standards, the civil aviation authorities shall execute written Implementation Procedures describing the methods by which such reciprocal acceptance shall be made respect to that technical specialty.

The background is a red mosaic with white tiles forming the letters 'MCCG' at the top and 'AIR TRAFFIC RIGHTS' in a large, stylized font across the center. The text is rendered in a blue, serif font.

# AIR TRAFFIC RIGHTS

By

**Paul Stephen Dempsey**

McGill University Institute of Air & Space Law

welcome to the institute of

# AIR & SPACE LAW

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Law Degrees  
and  
Certificate  
Programs

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