U.S. Department of Transportation
Office of Public Affairs
Washington, D.C.
www.dot.gov/affairs/briefing.htm

Speech

AIR TRANSPORT LIBERALIZATION: IDEAL AND ORDEAL

Jeffrey N. Shane
Under Secretary for Policy
U.S. Department of Transportation

SECOND ANNUAL ASSAD KOTAITE LECTURE
Royal Aeronautical Society
Montreal Branch

December 8, 2005
Montreal, Canada

Let me begin by expressing my profound gratitude to the Royal Aeronautical Society for inviting me to deliver this year's Assad Kotaite Lecture.

It is a wonderful privilege, of course, to be given the opportunity to present some thoughts about air transport policy to so distinguished an audience.

It is also a very special pleasure to participate in honoring Assad Kotaite, President of the Council of the International Civil Aviation Organization for the past three decades. As everyone in this room knows, Dr. Kotaite has compiled an immense record of dedicated service and accomplishment during his extraordinary career – a record that is unlikely ever to be replicated. If you look all the way back to the day he attended his first meeting of the ICAO Legal Committee, his career at ICAO actually has spanned half a century. I don't have to tell you how many times international civil aviation has reinvented itself during the past fifty years. The industry's evolution has consistently challenged the forms and structures established under the Chicago Convention. That ICAO's role in the governance of global air services has been sustained, adapted, and enhanced over this long period is attributable to the quality of its leadership during all of that time. That leadership was provided, year in and year out, by Assad Kotaite. He has achieved a towering legacy, and the world will forever be in his debt.

Dr. Kotaite's thirty-year Council Presidency furnishes the perfect backdrop for the talk I want to deliver this evening. I would like to offer a brief survey of the past three decades

of aviation liberalization and to discuss some lessons from that experience that I believe are relevant to current developments – notably the effort to forge a groundbreaking agreement for the liberalization of aviation across the North Atlantic.

Domestic Deregulation in the US

Dr. Kotaite ascended to the Presidency of the ICAO Council on August 1, 1976. Just the year before, the Subcommittee on Administrative Practice and Procedure of the United States Senate, chaired by Senator Edward Kennedy of Massachusetts, had launched public hearings on whether the US Civil Aeronautics Board's regulation of airline routes, rates, and services was still delivering value to the public.

On the first day of the hearings, the Acting Secretary of Transportation, John W. Barnum, announced that the Administration of President Gerald Ford had developed a major proposal for reform of the Civil Aeronautics Board. The present structure of regulation, he said, was "outdated, inequitable, inefficient, uneconomical, and sadly irrational."[1]

Just a few months later, the Civil Aeronautics Board itself made a surprising announcement. Led by a bold new chairman, John Robson, the Board proposed to launch a series of experiments "to assess the operation of the US domestic air transport system under limited or no regulatory constraints."[2] The Board would establish "zones of reasonableness" within which airlines would have the freedom to raise or lower their fares without regulatory interference, and would allow carriers the freedom to enter or exit selected markets at will, without prior CAB approval.

The experiments were launched, but the Senate hearings continued. They were highly contentious, and they made the subject of airline regulation a highly visible, national issue for the first time. The proponents and opponents of continued economic regulation of the airline industry came out in force, and their differences stood out in sharp relief. Because the most conspicuous proponents of regulation were the airlines themselves, and because they were occasionally overheard vilifying the advocates of change, the hearings made for great theater.[3]

They also made for a demonstration of the American legislative process at its best. The airline proponents of continued regulation were far better organized and politically powerful than the opponents.[4] And yet, in 1977, the US Congress passed a law deregulating all-cargo air services. It passed the Airline Deregulation Act, covering all

---

[1] Stephen Breyer, *Regulation and its Reform* (1982), at 329.

[2] "CAB Suggests Experimental Program to Test Consequences of Deregulation," Civil Aeronautics Board Press Release, July 7, 1975.

[3] See generally Thomas Petzinger, Jr., *Hard Landing* (1995), at 86-105; Breyer, fn. 1, at 317-340.

[4] "[P]rior to the Kennedy hearings the conventional wisdom was that those who might lose through deregulation – the airlines, the unions of airlines workers, and certain business travelers – would know of their potential losses and strongly oppose change, while the potential gainers, primarily nonbusiness travelers, would neither know nor care enough to overcome their opposition. This analysis proved faulty primarily because it overlooked the potential of [making the issue visible through the hearing process]." Breyer, fn.1, at 321.

domestic commercial aviation, in the following year. Against all odds, the public interest had prevailed, and a once radical idea was enshrined in US law.

Spreading Liberalization to International Aviation

Shortly after coming into office in 1977, the Administration of President Jimmy Carter began to re-examine the traditional approach to international aviation regulation, including what it perceived as an excessively mercantilistic bilateral negotiating process. On October 6, 1977, President Carter sent an important letter to Secretary of Transportation Brock Adams. It said that the "central goal in international aviation should be to move toward a truly competitive system. Market forces should be the main determiner of the variety, quality, and price of air service...." The letter went on to direct the Department of Transportation to pursue a fresh approach to the negotiating process:

> We should seek international aviation agreements that permit low fare innovations and scheduled service, expanded and liberalized charter operations, nonstop international service, and competition among multiple US carriers and markets of sufficient size. We should also avoid government restrictions on airline capacity. For keeping in mind the importance of a healthy US flag carrier industry, we should be bold in granting liberal and expanded access to foreign carriers in the United States in exchange for equally valuable benefits we receive from those countries. Our policy should be to trade opportunities rather than restrictions.[5]

It is difficult to appreciate, in this era of ubiquitous Open Skies agreements, the magnitude of the change reflected in those words. Only a year before, the Ford Administration, while supporting the deregulation of domestic aviation, had nevertheless issued a policy statement embracing a far more traditional approach to international aviation. Orderly markets and highly calibrated, reciprocal exchanges of rights had been the most important US objectives – "trading restrictions" -- not innovation and competition.[6]

With their new marching orders from President Carter, US aviation negotiators began the quest for liberal bilateral agreements – offering the airlines of other countries expanded but not unlimited new access to the US market – including new, interior gateways -- in return for provisions guaranteeing open entry ("multiple designation"), freedom to set fares ("double-disapproval pricing"), liberal charter provisions ("country-of-origin rules"), and the removal of ground-handling restrictions ("self-handling").

---

[5] Quoted in International Economic Policy Association, "Aviation Services in America's International Trade: A Review Under Open Skies" (December 1981), at 16.

[6] The White House, "International Air Transportation Policy of the United States" (September 1976). For example, while maintaining that a "basic tenet of US economic philosophy is that market-place competition produces improved services and lower total costs for the consumer," the statement said: "However, it does not follow that there must be multiple US flag carriers on all international routes." *Id.* at 9.

In 1978, the CAB attempted to bring about more price competition among international airlines by administrative fiat. It proposed to terminate the antitrust immunity that IATA tariff-setting machinery had enjoyed for the previous 33 years.[7] If price competition was indeed the order of the day in international aviation markets, the CAB maintained, coordinated price-fixing under IATA's traffic conferences needed to be curtailed.

Liberalization Criticized Everywhere

Thanks to these initiatives of the Carter Administration and the CAB, the United States made itself highly unpopular within the international aviation community. The CAB's IATA proposal was delivered in what many observers thought was the most offensive possible way: as an "order to show cause" why the Board should *not* terminate the immunity. It looked to many like a *fait accompli*, and it was immediately denounced everywhere as an egregious example of US unilateralism that threatened the essential framework for a seamlessly connected and convenient international aviation system. The US government organized a number of regional meetings with governments around the world in an effort to lower the temperature of the issue.

Even the offer of greater access to a few more US gateways as payment for liberalization was resented by many of America's trading partners. It was seen as an effort to leverage the attractiveness of the US market as a means of ramming US policy down the throats of unwilling governments.

As I recall it, there was an abiding nastiness and tension about a lot of what we were doing in aviation policy at that time. My own first exposure to all of this was in 1979, when I joined the Department of Transportation as an assistant general counsel. Shortly after arriving at my new job I was invited to sit in on a round of aviation talks in Washington between the US and Canada. I will confess now that, while I did my best to keep a knowing and intelligent look on my face, I had not the slightest idea what the two chairmen were talking about. All I knew was that they were furious at each other and florid-faced. I wondered what I had gotten myself into.

The nastiness was by no means confined to relations with our trading partners. The established US international airlines – primarily Pan Am, TWA, Northwest, Braniff, and Flying Tiger – found nothing to like in the newfound US determination to inject meaningful competition into international markets that had long been their private preserve. They knew that the real threat would not be from foreign airlines but rather from home, where deregulation was quickly spawning a new generation of highly efficient and aggressive carriers whose international flights – once they were permitted – would be fed by huge domestic networks. From the outset, therefore, the "incumbent airlines," as they were called, were hostile to the entire enterprise.

Even views within the US government itself were by no means homogeneous. Everyone knew and agreed what the core principles of our policy were; the President had told us. Ways and means were an entirely different matter, however. Every round of aviation

---

[7] CAB Docket 32851, Order 78-6-78, June 9, 1978.

talks was preceded by one or more meetings among the agencies during which US objectives for that particular bilateral aviation relationship were defined. What pace of change would we insist upon? How much compromise would we accept? Would we continue to protect particular gateways at the behest of US incumbents? The meetings were long and often unpleasant. And while the US tried to maintain the appearance of unity in response to the avalanche of criticism that greeted the CAB's so-called "show cause" order on IATA's tariff agreements, the truth was that the Departments of Transportation and State were highly critical of the CAB's action.

Despite it all, the Carter Administration negotiated a number of important bilateral breakthroughs. New, liberalized agreements with trading partners in Europe, the Middle East, and Asia established an important new model for international aviation relations.

Congressional Oversight of International Aviation Policy

Those new agreements galvanized the incumbent US international airlines into action. They complained bitterly to Congress that the US was giving away "hard rights" – new US gateways for the benefit of foreign airlines – in return for "soft rights" – nothing more than the willingness of foreign governments to stop regulating entry, fares, and schedules. The US government's worst failing, they said, was its ineffectiveness in responding to the discrimination and other obstacles to full market participation that they routinely encountered in their overseas operations.

In late 1979, Congress passed a new law – the International Air Transportation Competition Act – and spelled out a number of objectives "to guide the United States Government in establishing a negotiating policy for international aviation."[8] While the legislation confirmed the basic elements of the Carter Administration's procompetitive aviation policy, it placed a new and greater emphasis on the consequences of liberal aviation agreements for US carriers. Among the goals for international aviation policy from this point forward, the Congress wrote, was –

> the strengthening of the competitive position of United States air carriers to at least assure equality with foreign air carriers, including the attainment of opportunities for United States air carriers to maintain and increase their profitability, in foreign air transportation.[9]

A particularly important provision said that it was permissible for US negotiators to offer opportunities for carriers of foreign countries to increase their access to United States points "if exchanged for benefits of similar magnitude for United States carriers or the traveling public with permanent linkage between rights granted and rights given away."[10]

Finally, the legislation made clear that US negotiators should place greater emphasis on eradicating discrimination and other barriers to doing-business as a major objective of US

---

[8] H.R. Rept. No. 96-602, 96th Cong., 1st Sess. (1979), at 6.
[9] Pub. L. No. 96-192, § 17(e)(1) (1980), now codified at 49 USC. § 40101(e)(1).
[10] *Id.*, § 17(e)(8), now codified at 49 USC. § 40101(e)(8).

aviation policy.[11] All in all, it looked as though the incumbent US international carriers had been highly successful in persuading Congress to recalibrate US aviation negotiating policy in a way favorable to their position.

But they weren't satisfied. Another year went by and Ronald Reagan was elected President. As the new Reagan Administration settled in, the US incumbents launched a renewed, two-pronged assault on liberalization. First, they submitted a "white paper" to the incoming Administration denouncing the excesses of the Carter Administration's aviation policy, and bolstered it with an economic study purporting to demonstrate what a catastrophe that policy had been for US carriers. "[O]n an overall basis," the study said, "the United States is worse off today in market shares than at any time in the last decade."[12] In response to the white paper and study, the Reagan Administration instituted a moratorium on further negotiations that lasted several months.

At the same time they were complaining to the Reagan Administration, the carriers were also renewing their complaints to Congress. As a result, no fewer than nine public hearings on aviation policy were conducted by the House Subcommittee on Investigations and Oversight, led by Congressman Elliott Levitas of Georgia. They took place between July 1981 and May 1982. In August 1983, the Subcommittee issued its conclusions in a document that became known as the "Levitas Report."[13]

After paying the usual lip service to the importance of allowing consumers to benefit from competition, the report roundly denounced the performance of the government agencies responsible for aviation policy. "Our carriers' economic viability has been adversely affected," the Subcommittee said, "by an Open Skies policy which has extended domestic deregulation to the international arena." "Our agencies," it continued, ". . . have not forcefully negotiated bilateral agreements that support our air industry...." The nearest thing to a compliment in the report was a single sentence:

> The Subcommittee is pleased to have noted that the attitude of US negotiators at bilateral conferences seemed to have hardened since the beginning of our hearings in July 1981 in that they don't seem to give away rights for the sake of having a treaty.[14]

Quiet and Consolidation

At this point in the story, you are probably getting the drift. There is nothing easy about liberalizing aviation markets. For the next several years, in fact, the US was less aggressive in the pursuit of liberal agreements. An important multilateral agreement in 1981 between the US and the individual aeronautical authorities that comprise the European Civil Aviation Conference introduced greater pricing flexibility into the trans-

---

[11] *Id.*, § 17(e)(9), now codified at 40 USC. § 40101(e)(9).
[12] "Aviation Services in America's International Trade: A Review Under Open Skies," International Economic Policy Association (December 1981), at 23.
[13] H.R. Rept. No. 98-19, 98th Cong., 1st Sess. (1983).
[14] *Id.* at 7.

Atlantic aviation market, and the CAB cited that agreement as justification for staying its IATA show-cause order on four separate occasions.[15] The proceeding was finally terminated in 1985.[16] US negotiators focused less on grand reforms than on individual, market-specific issues: the elimination of ground-handling monopolies; reducing excessive airport fees; securing market access for computer reservation systems; ensuring that United Airlines was permitted to succeed Pan Am on routes to Asia that it purchased in 1985; obtaining new market access opportunities in Japan, China, India, Canada, and elsewhere; and so on.

While the rest of the 1980s was a period of relative quiet in international aviation relations, the US airlines began exploiting more effectively the broad new freedoms that had been delivered – sometimes over their own vehement objections -- in the earlier liberal bilateral agreements.

In fact, the performance of US airlines in international markets during the 1980s was extraordinary. They carried nearly twice the number of passengers in 1990 as in 1980; their market share grew by about 20 percent; their revenues attributable to international operations more than doubled; and the percentage contribution of international services to their overall system-wide revenues increased by about 20 percent.

Consumers benefited in even more dramatic ways. In 1980 there had been 17 US gateways with nonstop services to Europe; by 1990 that number had increased to 25. The number of nonstop routes across the North Atlantic – city-pairs with nonstop service – grew from 92 to 1980 to 161 in 1990. Similarly dramatic increases were seen in the number of gateways and nonstop routes to the Asia/Pacific region and to Latin America. Passenger growth was consistently stronger in liberalized markets than in non-liberalized markets. Cargo carried by US airlines more than doubled between 1980 and 1990.[17]

Open Skies: Broadening the Definition

The policy had been a success – at least as far as it went. But it didn't go far enough. Even our most liberal bilateral agreements still contained major restrictions on the operation of airlines – both US and foreign -- in international markets. Many of those restrictions had been maintained for the protection of US airlines, particularly after the Congressional criticism of the late 1970s and early 1980s. In many cases, they prevented foreign airlines from bringing international service to US communities that badly wanted it. The foreign airlines were often unwilling to seek an exchange of rights to facilitate that new service because the exchange would merely increase the competitive advantage they felt US carriers already enjoyed.

---

[15] CAB Docket 32851, Orders 81-5-27, May 6, 1981; 81-9-68, September 15, 1981; 82-1-31, January 7, 1982; 82-3-77, March 15, 1982.

[16] DOT Docket 32851, Order 85-5-32, May 10, 1985. (The Department of Transportation succeeded to the international aviation responsibilities of the CAB after the Board's "sunset" at the end of 1984.)

[17] Unpublished DOT study, December 1992.

Even where no US airline was seeking new opportunities in its service to a foreign airline's home country, the traditional bilateral approach left us no easy way to grant new rights unilaterally. Instead, our answer was likely to be "not now." We would wait until some US carrier needed comparable new rights, at which point an exchange would be discussed.

Because we now had so many liberal agreements that already delivered everything that US carriers were likely to need in terms of market access, however, there was no longer anything to wait for. When we asked ourselves what value such restrictions brought to the US economy, we found we had no good answer. In fact, it was clear that the restrictions actually reduced the value of our agreements by limiting competition unnecessarily.

To overcome that anomaly, Secretary of Transportation Samuel Skinner in 1990 proposed a new "Cities Program." The idea was simple: If an airline from a liberal trading partner wished to serve a US gateway city that was not listed for service in the applicable bilateral agreement and no US airline was offering to serve the same city, we would permit the new service without the need for a new negotiation. DOT decided, in other words, not to let the traditional bilateral negotiating process stand in the way of beneficial air service without a good reason.

It sounds simple enough, but the program represented a dramatic departure from past policy. We needed to ask ourselves whether the program fully respected the requirements set forth in the International Air Transportation Competition Act of 1990. Recall that US negotiators were permitted by that legislation to create opportunities for foreign carriers to increase their access to United States points "if exchanged for benefits of similar magnitude for United States carriers or the traveling public with permanent linkage between rights granted and rights given away." But here we were, proposing to give away "hard rights" free of charge, without any exchange whatsoever.

We concluded that the proposal was indeed consistent with the statutory mandate. By definition, the cases covered by the proposal would be those in which our trading partner literally had nothing more to give. Moreover, the new service would certainly create benefits of similar magnitude for the traveling public. We finalized the proposal,[18] and a number of new services were launched without the need to negotiate with us. There was some complaining from US airlines, but nothing like the attacks of a decade before.

The most important contribution of the Cities Program, in retrospect, was the revelation that we could actually give routes away free of charge to the airlines of liberal trading partners. It wasn't long before that discovery led to a new and even more exciting concept: the possibility of launching a new "Open Skies" approach to international air services. Secretary Skinner and his successor, Andrew Card, both embraced the idea, and the new policy was adopted in August 1992.[19] It was even simpler than the Cities

---

[18] DOT Docket 46534, Order 90-1-62, Jan. 30, 1990, modified by Order 91-11-26, Nov. 20, 1991.
[19] DOT Docket 48130, Order 92-8-13, Aug. 5, 1992.

Program: The airlines of countries that agreed to open their air services markets to US carriers would receive, in return, open access to and through the United States.

The US signed its first Open Skies agreement with the Netherlands shortly thereafter. Predictably, the agreement was criticized by US airlines. Because they already enjoyed virtually open rights to serve the Netherlands under the previous US-Dutch agreement, they pointed out, the new agreement offered US carriers no incremental market access whatsoever. At the same time, it granted KLM access to every point in the United States and from any US point to any point in the world. That most of the traffic carried on KLM's flights to and from the US came from or was headed to countries other than Holland only made it worse. Could it be said that we allowed KLM to increase its access to US points "in exchange for benefits of similar magnitude"?

DOT had anticipated the question in its initial proposal regarding Open Skies, and it had asked interested parties to comment on it. After reviewing the submissions, the Department addressed the issue in its final order adopting the new policy:

> We are frankly and firmly committed to freer trade in civil aviation services, and our commitment is grounded, in large part, on our experience with both the market-oriented and the restrictive approaches that govern many of our current bilateral aviation relationships. We have seen much larger dividends in those markets which allow greater scope for airline prices and service initiatives. Indeed, if we were to embark on negotiation initiatives only where we could anticipate precisely equal economic benefits we would have been deterred from some of the most successful agreements we have achieved in the last decade. As with the Cities Program before, we find that the Open-Skies program represents a further progression along the path toward a truly open environment for international aviation service....[20]

The International Air Transportation Competition Act of 1990 required that US negotiators obtain, in every aviation agreement that conferred rights on the airlines of another country, "benefits of similar magnitude for United States carriers or the traveling public with permanent linkage between rights granted and rights given away." The Department of Transportation now explicitly rejected the most literal interpretation of those words. They did *not* require US negotiators to obtain "precisely equal economic benefits." Instead, DOT read the words "benefits of similar magnitude" in the broadest possible way, and found the requirement satisfied by the "much larger dividends in those markets which allow greater scope for airline prices and service initiatives." The interpretation was never challenged.

US-EU Negotiations

As I noted earlier, the United States and the European Union are now engaged in a historic effort to take the *next* important step: establishing a comprehensive trans-

---

[20] *Id.* at 2.

Atlantic Open Skies agreement. I don't want to get ahead of the story, but from where I sit, it looks as though the two sides are closer to a truly transformational deal than they have ever been before. In a stunning achievement, the US and EU delegations concurred in the text of the new agreement three weeks ago. Just this past Monday in Brussels, the EU Transport Ministers expressed tentative satisfaction with that text.

Yes, the process has a way to go before it is finished. The Ministers made it clear, as everyone knew they would, that they want to see the final disposition of a recent DOT rulemaking proceeding before they decide whether to go forward with the agreement. The DOT proposal, if adopted, would broaden the possibilities for foreign participation in the management of US airlines – at least for citizens of countries that have Open Skies relationships with the United States and that provide comparable opportunities to US citizens. The deadline for our receipt of comments on the proposal is January 6, 2006. It is likely to take us another two months to issue a final rule.

Secretary of Transportation Norman Mineta, by proposing an approach to cross-border airline cooperation more in keeping with contemporary requirements, has reminded us again that only through an exercise of vision and political courage is it possible to accommodate policy to the needs of an evolving international airline industry. Predictably, the proposal has generated a lot of controversy on both sides of the Atlantic. Some of the rhetoric has an all too familiar ring to it.

While I am not in a position to offer any predictions regarding the likely outcome of the rulemaking proceeding, I hope it is clear that, at least as a tentative proposition – until we have reviewed the comments – we think the proposal is a sensible one. Indeed, we think it is long overdue. If our talks with the EU Commission had collapsed three weeks ago instead of ending in an agreed text, we would not have abandoned the proposal but still would have seen it through to a conclusion. We think – at least as a preliminary matter – that the restrictions we propose to modify represent anachronisms that no longer advance legitimate objectives.

Secretary Mineta has said from the outset that this is a matter of domestic policy, and it will be decided in keeping with our assessment of what's best for the United States. We have been attempting to liberalize the rules governing foreign investment in US airlines, after all, since before the EU Single Aviation Market came into being.

I must tell you that many of us on the US side are more than a little puzzled at how accounts of this effort to conclude the most far-reaching agreement in the entire history of international aviation have been reduced to the story of a US Department of Transportation rulemaking proceeding. The press seems to have missed the most important point: that the agreement concluded in November by the two delegations, with or without the rulemaking, has the potential to transform the trans-Atlantic aviation market in fundamental ways.

First, it brings US-EU relations into conformity with the requirements of European law at long last. The willingness of the United States to eliminate the traditional nationality

clause that is currently in every US bilateral agreement – meaning that an EU airline's flights to the US will no longer have to begin or end in that airline's home country – is more an advantage for EU carriers than for US carriers, and means that consumers on both sides of the Atlantic would enjoy a quality of competition that exceeds anything we have seen up to now.

Second, and potentially even more important, the draft agreement would open an infinity of new possibilities for the reinvention of the EU airline industry. The anachronistic bilateral impediments to otherwise sensible mergers and other combinations – even under existing Open Skies agreements -- would be swept away on day one, and the implications for a more robust and competitive global presence by EU carriers would be profound.

Historic Context

It should not be surprising, as we get closer to a successful conclusion, that the decibel level in some quarters has steadily increased. The decision by the US and the EU to enter upon negotiations toward an "Open Skies Plus" agreement across the North Atlantic was a bold and courageous step forward. That is why, as the temperature rises, it is important that we view this chapter in US-EU relations within the context of the past thirty years. A number of lessons can be drawn from that experience:

The first and most important lesson is that aviation liberalization is not for the faint of heart. It is the classic good deed that will not go unpunished.

Second, liberalization gets easier with time. Partly, that's because you develop calluses. But mostly, it's because the skeptics discover that the icy waters of liberalization really aren't that bad once you have been swimming in them for a while. A firestorm erupted in 1978 after the US gave KLM access to six US gateways in return for a Dutch agreement to remove all regulatory restrictions on US carriers. It was the quintessential "hard-rights-for-soft-rights" agreement, and it helped to trigger those endless hearings before Congress. By 1991, however, the US was able to award KLM additional gateways free of charge under the Cities Program with far less criticism. And in 1992, when the US awarded KLM access to *all* US gateways and *all* points beyond the US as part of the US-Netherlands Open Skies agreement, the negative reaction was similarly moderate.

Third, liberalization begets more liberalization. The US first sought some loosening of the rules governing entry, pricing, capacity, routes and the like in the late 1970s, and gave away some new market access in return. The success engendered by those agreements made it possible to launch the Cities Program in 1990. And the Cities Program made the Open Skies policy possible two years later. The US and the EU delegations have negotiated a "Phase One" agreement. There should be no doubt whatsoever that, if we find the courage to put that agreement into effect, there will be a Phase Two.

Fourth, our ability to establish and sustain an Open Skies policy in 1992 makes clear that the Secretary of Transportation enjoys considerable latitude in the implementation of legislative mandates. The Secretary is usually able, through administrative interpretation,

to adapt them to current perceptions of what the public interest requires. That is because legislation relating to economic policy is typically nuanced and rarely categorical. Thus, statutory language enacted in 1980 to moderate perceived liberalizing excesses on the part of US aviation delegations was no obstacle to the adoption of the Open Skies policy a dozen years later.

Fifth, no matter how clever you think you are, you cannot accurately predict the consequences of liberalization. The authors of domestic deregulation in the US envisioned an aviation market characterized by a galaxy of exciting, highly competitive new entrants. What they got instead, to borrow a metaphor from NYU Law Professor Mike Levine, was a meteor shower. Most pre-deregulation airlines quickly learned how to consolidate their positions, build strong and profitable hubs, and control prices at the high end for much longer than the founding fathers expected. The industry restructuring they anticipated didn't begin until the end of the 1990s, more than 20 years after the passage of the Airline Deregulation Act.

Similarly, when we launched the Open Skies policy, we didn't fully anticipate the extent to which it would encourage the formation of more robust cross-border alliances – facilitating a more effective global presence for US airlines and their overseas partners than had been possible before. The changes within the industry engendered by our Open Skies agreements have been an endless source of wonder.

Conclusion

A US-EU aviation agreement would not only bring an entirely new level of liberalization to trans-Atlantic air services, but would facilitate the most important reinvention of international aviation we have ever seen. It can be expected to enhance the quality of competition across the Atlantic in a dramatic way. It would bring nearly 750 million people and many of the world's great airlines together under a single liberalized regime. It would take liberalization to the next level, linking two huge markets and allowing airlines from both sides of the Atlantic unprecedented flexibility in how they build, manage, and expand their operations. It would give us the momentum to do even more in follow-on US-EU accords. And it would instantly become a new multilateral template for aviation liberalization elsewhere in the world. A US-EU agreement would be, quite simply, the most important thing we could do to enhance the contribution that air transport makes to all of our economies.

It is my fervent hope that the thirty-year span of Dr. Kotaite's remarkable tenure as ICAO Council President will include, in addition to all the other innovation he has seen and nurtured in this most dynamic of industries, the advent of a new and more relevant model for the conduct of international aviation relations. It is an opportunity we should not squander.

Thank you again for your gracious invitation to share these thoughts with you.

# # #