Darkening Skies?

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Presentation by P. Paul Fitzgerald

Open Skies History

The first Open Skies Agreement was signed on October 14th 1992 between the U.S. and the Netherlands.

US D.O.T. Order 91-1-41, (Jan 23, 1991) referred to as “Northwest 2” allowed facilitated KLM/NW cooperation. = start of Skyteam.

That was less than 20 years ago.

Already the concept is in trouble.
In re Defining "Open Skies," DOT Order 92-8-13, (August 5, 1992), the US DOT spelled out the 11 elements of an Open Skies agreement.

1. Open entry on all routes.
2. Unrestricted capacity and frequency on all routes.
3. Unrestricted route and traffic rights, no restrictions on intermediate or beyond points, change-of-gauge, routing flexibility, co-terminalization of 5th Freedom traffic.
4. Double disapproval in 3rd and 4th Freedom markets, price matching rights in 3rd country markets and price leadership to the extent that carriers in 3rd country markets have it.
5. Liberal charter arrangements (least restrictive of two regimes applies).
7. Un-restricted Conversion and remittance arrangements
10. Level playing field with respect to user charges, fees, inter-modal rights, access to infrastructure.
11. Explicit commitment for non-discriminatory operation of an access for Computer Reservation Systems.

The 1992 definition was not specific on

- 6th Freedom*
- 7th Freedom for passenger operations
- 8th Freedom (consecutive cabotage)*
- 9th Freedom (pure cabotage)*
- Airline ownership
- Environmental issues

* Each of these freedoms existed in 1992 and was being exercised in foreign markets by U.S. carriers.
The explicit freedoms

Here an agreement with the United Arab Emirates permits unlimited 3rd and 4th Freedoms and perhaps 5th freedom flights via 3rd countries.

The Practical Freedoms

Here UAE carriers combine the rights in the previous slide, with rights from agreements that the UAE has with other counties = 6th freedom. This enhances the value of the rights in the previous slide, and may impede the profitable exercise of rights between 3rd countries.
2007 Open Skies Template

A. Routes for the airline or airlines designated by the Government of A-Country:
   1. From points behind A-Country via A-Country and intermediate points to a point or points in B-Country and beyond.
   2. For all-cargo service or services, between B-Country and any point or points.

B. Routes for the airline or airlines designated by the Government of B-Country:
   1. From points behind B-Country via B-Country and intermediate points to a point or points in A-Country and beyond.
   2. For all-cargo service or services, between A-Country and any point or points.

Liberal granting of six freedoms 1-6. No mention of 7, 8 or 9.
Open Sky agreements now allow for 6th Freedom services but rarely are they this explicitly advertised. Air New Zealand’s flight 8 operated from Melbourne, Australia, via Auckland to San Francisco.

Air France’s London-originating Heathrow-Los Angeles service was an example of 7th Freedom.
Two types of Cabotage

8th Freedom is an airline operating between two points in a foreign country as part of an international service.

Home ← Foreign 1 ← Foreign 2

9th Freedom is an airline operating between two points in a foreign country.

Foreign 2

Home ← Foreign 1 ← Foreign 3

Foreign 4

8th Freedom Examples

8th Freedom (Consecutive cabotage) is an airline operating between two points in a foreign country as part of an international service.

The Frankfurt-Berlin segment of Pan Am’s New York-Frankfurt-Berlin service which operated between 1966 and 1990 is perhaps the only example of a true 8th Freedom service.

The Tokyo-Okinawa segment of Northwest’s former Los Angeles-Tokyo-Okinawa service was subject to conditions. Similar conditions apply to Northwest’s current Tokyo-Nagoya-Saipan service.
8th Freedom Examples 2

Qantas offers a daily New York-Los Angeles-Sydney service. JFK-LAX local traffic rights would be 8th Freedom.

<table>
<thead>
<tr>
<th>From NEW YORK, NY (JFK)</th>
<th>To: SYDNEY, AUSTRALIA (SYD)</th>
</tr>
</thead>
<tbody>
<tr>
<td>From - To Validity Days</td>
<td>Dep</td>
</tr>
<tr>
<td>- - 12/15/07 18:40</td>
<td>09:20+2</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>From LOS ANGELES, CA (LAX)</th>
<th>To: SYDNEY, AUSTRALIA (SYD)</th>
</tr>
</thead>
<tbody>
<tr>
<td>From - To Validity Days</td>
<td>Dep</td>
</tr>
<tr>
<td>- - 12/15/07 23:45</td>
<td>09:20+2</td>
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</tbody>
</table>

9th Freedom = “Pure” Cabotage

There are several examples of 9th Freedom within the EU, particularly within France, Italy, Spain and the U.K.

- British-based Easy Jet flies from Paris to Toulouse and Nice, from Madrid to Ibiza and from Milan to Naples, Rome and Venice.
- Irish-based Ryanair flies from Glasgow to London, Barcelona to Malaga, Paris to Marseille, Milan to Rome.

<table>
<thead>
<tr>
<th>Paris (Beauvais) (BVA) - Marseille Provence MP2 (MRS)</th>
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<tbody>
<tr>
<td>FR7773</td>
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</table>
### How valuable are rights?

**Unused 5**ths in N.A.
- YUL-BOS (Israel + UK)
- YUL-ORD (Belg + Yug)
- YUL-DTW (UK)
- YUL-FRA (India)
- YUL-MIA (Argentina)
- YUL-MEX (Spain)
- YUL-JFK (various)
- YUL-PIT (UK)
- YYZ-ORD (Italy)
- YYZ-FRA (Singapore)
- YYZ-SEA (Thailand)

**Unused 5**ths (Trans-At)
- YYZ-BMH (Pakistan)
- YYZ-FRA (Singapore)

**Unused 5**ths in EU
- BRU-TXL (US)
- BRU-MAN (CDA)
- BRU-SVO (US)
- BRU-VIE (US)
- FRA-ATH (US)
- FRA-BOM (US)
- FRA-BUH (US)
- FRA-BUD (US)
- FRA-DEL (US)
- FRA-IST (US)
- FRA-LHR (US)
- FRA-MXP (US)
- FRA-SVO (US)
- FRA-PRG (US)
- FRA-LED (US)
- FRA-VIE (US)
- FRA-WAW (US)
- LHR-TXL (US)
- LHR-BRU (US)
- LHR-HAM (US)
- LHR-LYS (CDA)
- LHR-NCE (CDA)
- MUC-FCO (CDA)
- CDG-ATH (US)
- CDG-TXL (CDA)
- CDG-CAI (US)
- CDG-DUS (CDA)
- CDG-GVA (US)
- CDG-TLV (US)
- CDG-ZRH (US)

### Declining Value of 5**ths**

Long-range aircraft make 5**th** freedom rights obsolete.

So do code-shares

Airlines like to fly non-stop from hub to destination.

Asia/Australia/New Zealand is the only region where there is still extensive use of 5**th** Freedom rights.

5**ths** mainly used where non-stops not feasible; EU-Australia, U.S-Southeast Asia, Asia-Latin America.
Accessing “interior” markets

LH serves 17 cities ATL, BOS, CLT, ORD, DFW, DEN, DTW, IAH, LAX, MIA, JFK, MCO, PHL, PDX, SFO, SEA, IAD

In addition, Lufthansa code shares with Star Alliance partners United and Continental to virtually every city in the US. AF/KLM and BA have similar arrangements.

En-route Clearance 1

These issues are similar whether the “domestic country” is Australia, Brazil, China, Canada, India, Pakistan, the U.S. or the Schengen agreement area of the EU.
En-route clearance

- **Airlines hate it (Blind sectors)**

<table>
<thead>
<tr>
<th>Route</th>
<th>Departure</th>
<th>Arrival</th>
</tr>
</thead>
<tbody>
<tr>
<td>Olympic 423</td>
<td>ATH 08:55</td>
<td>YUL 12:05</td>
</tr>
<tr>
<td>Zoom 217</td>
<td>CDG 17:55</td>
<td>YUL 19:35</td>
</tr>
<tr>
<td>Air Transat 411</td>
<td>CDG 11:55</td>
<td>YUL 13:35</td>
</tr>
</tbody>
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- **Carrying local passengers on the domestic sector**

<table>
<thead>
<tr>
<th>Airlines</th>
<th>Route</th>
<th>Departure</th>
<th>Arrival</th>
</tr>
</thead>
<tbody>
<tr>
<td>Air Canada 861</td>
<td>LHR 11:15</td>
<td>YYT 13:15</td>
<td></td>
</tr>
<tr>
<td>Air China 992</td>
<td>YVR 13:45</td>
<td>SHA 16:30</td>
<td></td>
</tr>
<tr>
<td>Air India 112</td>
<td>LHR 10:00</td>
<td>DEL 22:40</td>
<td></td>
</tr>
<tr>
<td>Lufthansa 715</td>
<td>NRT 10:45</td>
<td>MUC 15:40</td>
<td></td>
</tr>
<tr>
<td>Pakistan 724</td>
<td>FRA 13:15</td>
<td>LHE 1:05</td>
<td></td>
</tr>
<tr>
<td>Varig 861</td>
<td>JFK 20:00</td>
<td>GIG 6:20</td>
<td></td>
</tr>
<tr>
<td>Qantas 2</td>
<td>BKK 7:55</td>
<td>SYD 20:45</td>
<td></td>
</tr>
<tr>
<td>TWA 841</td>
<td>AMS 11:05</td>
<td>JFK 14:05</td>
<td></td>
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</tbody>
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In 1992 national carriers flew internationals routes serving 2 cities in their home country. Only TWA 841 had full traffic rights. CA 992, AI 112 and QF 2 could carry connecting international passengers.

Infrastructure Challenges

- It is getting increasingly difficult to find gates and slots at the world’s major airports.

  Own the terminal; BA @ JFK.

  Get semi-exclusive use of an airport; CO @ CLE.

  Build an exclusive runway; AK @ KUL.
Infrastructure Challenges 2

Porter Airlines’ fight with the FAA for greater access to EWR shows how infrastructure can impede the exercise of rights under an Open Skies agreement.


Environmental Issues

- Environmental issues are directly linked to fuel efficiency. Airlines have tremendous incentives to improve fuel efficiency.

Air Canada stripped this aircraft, C-GDSP of more than 300 pounds of paint in November 2005 in an effort to save fuel. The results were not very good so the plane was re-painted in June 2006.
Airline Ownership

- In 2008 75% of Air Canada’s shares were held by ACE Aviation Holdings Inc.
- At the time 75% of the shares in ACE Aviation Holdings Inc. were owned by foreigners.
- If you take 75% of 75% you get 56.25% or majority voting control.

Anti-Trust Immunity

Oneworld has been seeking Anti-trust immunity since 2007, and the discussion is still ongoing.

These applications could get even more complicated. See Congressman Oberstar’s FAA Reauthorization Act of 2009, H.R. 915.
Understanding Industry

- Airlines may not need full Open Skies agreements; most low-cost international carriers depend almost exclusively on 3rd and 4th freedoms. Air Asia, Jetstar Airways, Ryanair, Southwest.
- Air Bilateral Agreements serve consumers best when negotiators focus on those issue which expand competition on a level-playing field basis; access to infrastructure, taxation, doing business, self-handling.
- Issues such as cabotage, airline ownership and the environment should not be seen as conditions precedent for greater air liberalization.

Thank You

Paul Fitzgerald.