University of Miami Law School
Institutional Repository

University of Miami Inter-American Law Review

10-1-1980

Developments in United States International Air Transportation Policy

Gloria Schaffer

Stephen H. Lachter

Follow this and additional works at: http://repository.law.miami.edu/umialr

 Part of the Transportation Law Commons

Recommended Citation

Gloria Schaffer and Stephen H. Lachter, *Developments in United States International Air Transportation Policy*, 12 U. Miami Inter-Am. L. Rev. 585 (1980)
Available at: http://repository.law.miami.edu/umialr/vol12/iss3/5

This Comment is brought to you for free and open access by Institutional Repository. It has been accepted for inclusion in University of Miami Inter-American Law Review by an authorized administrator of Institutional Repository. For more information, please contact library@law.miami.edu.

Developments in United States International Air Transportation Policy

GLORIA SCHAFFER*
AND
STEPHEN H. LACHTER**

Nineteen-eighty has been a traumatic year for the international airline industry. The explosive increase in the price of fuel, the grounding of a substantial portion of our fuel-efficient fleets, worldwide monetary instability and, in the United States, the lengthy United Airlines strike may have come close to straining industry's capacity to adapt to a changing environment. But one of the remarkable characteristics of this industry is its ability to survive. This year's problems—like similar difficulties in past years—will be surmounted, not by the actions of governments, but by the ingenuity and imagination of airline managements throughout the world.

Despite the concern of the effects and implications of the changing regulatory regime in the United States upon foreign-based aviation enterprises, deregulation in the United States has been a remarkable success. One only has to contrast the impact of the 1973-74 fuel crisis with the present situation to see how much more successfully domestic United States airlines have been able to cope in these difficult times. This domestic experience is now being drawn on to reshape United States international air transportation policy. Three of the major elements of this new policy are: (1) the new and evolving format of recent bilateral air transportation agreements;[1] (2) the Civil Aeronautics Board's (CAB *or* Board) investigation of the International Air Transportation Association (IATA); and (3) the new legislation governing regulation of airlines flying international routes to and from the United States. That legislation, the International Air Transporta-

---

*Gloria Schaffer is currently a member of the Civil Aeronautics Board.

**Stephen H. Lachter is Executive Assistant to Ms. Schaffer. Mr. Lachter received his A.B. degree from Syracuse University in 1966, and his J.D. from Georgetown University Law Center in 1969. This Comment is adapted from an address given by Mr. Lachter on April 25, 1980, at the Sixteenth Annual Air Transportation Conference and Tenth Annual Meeting of the Asociación Latinoamericana del Derecho Aéreo y del Espacio, held in Miami, Florida.

1. For general background information on past bilateral agreements concerning the air transport industry, see Diamond, *The Bermuda Agreement Revisited: A Look at the Past, Present and Future of Bilateral Air Transport Agreements*, 41 J. AIR L. & COM. 419 (1975) and Gertler, *Bilateral Air Transport Agreements: Non-Bermuda Reflections*, 42 J. AIR L. & COM. 779 (1976).

tion Competition Act of 1979,[2] was signed into law on February 15, 1980.

It is important not only to understand the new U.S. policy, but also to consider its implications for international air transportation. The comprehensive nature of the regulatory change in United States aviation policy, and the large fraction of the world's aviation to which it applies, have made it a phenomenon impossible for aviation executives and government policymakers around the world to ignore.

I. The United States' Bilateral Air Transportation Agreements

Perhaps the most significant international development in the past years has occurred on the bilateral front, where the United States has been able to change the legal framework for entry and price control that has characterized its international air relationships for more than thirty years. A brief review of history indicates that the modern international air transportation system developed from agreements at the Chicago Convention in 1944,[3] where decisions were reached in many important technical areas and on some of the basic rules governing air travel from one sovereign state to another. A number of economic questions, however, were left unresolved by the Chicago Convention. The United Kingdom sought close government control and supervision over fares and capacity, while the United States sought a greater level of competitive freedom—more than most other countries were willing to allow.

Shortly after Chicago, the two major players, the United States and the United Kingdom, met in Bermuda to try to resolve, on a bilateral basis, the major pricing and entry issues that had remained open. After extensive negotiations, a compromise, the Bermuda Agreement,[4] was struck. The British agreed to impose no prior restraints on capacity and to permit each country to designate more than one airline to provide service. The United States, on the other hand, agreed to full unilateral governmental control over pricing policy and fares.

For the next thirty years, the Bermuda Agreement became the basic pattern for aviation agreements between the United States and more than sixty other nations around the world. In most of these

---

2. Pub. L. No. 96-192, § 17, 94 Stat. 42 (1980).
3. Dec. 7, 1944, 61 Stat. 1180, T.I.A.S. No. 1591, 15 U.N.T.S. 295.
4. Feb. 11, 1946, United States - United Kingdom, 60 Stat. 1499, T.I.A.S. No. 1507.

agreements, new capacity proposed by a carrier must be allowed for at least six months. In all these agreements, either government could block any new fare proposed by any carrier. Charters were generally allowed by informal agreements, with rather strict conditions. Most agreements allowed multiple designation—the designation of more than one airline to serve each market—although none of the United States' major trading partners expected or even contemplated that their national carrier would have to face competition from a large number of U.S. carriers over the same route.

In 1976, the United Kingdom, exercising the right contained in the agreement, denounced Bermuda I.[5] According to the terms of the Agreement, termination became effective one year from the date of denunciation. Not surprisingly, extensive negotiations were held in the interim and a new agreement—Bermuda II[6]—was reached by the Carter Administration and the United Kingdom. While no one in Washington was quite ready to admit it, the new agreement was in many ways more restrictive than the Bermuda I Agreement it replaced, particularly as it required service reductions, specifically between Boston and London. The reaction to Bermuda II in the United States was vociferous and forced the administration to re-examine the restrictionist principles which had come to govern U.S. international aviation activities.

By the fall of 1977, a policy shift had occurred in the U.S. government favoring bilateral arrangements offering more, not less, flexibility. In August of 1978, President Carter issued a Statement on International Air Transportation Policy which affirmed the principles of price competition and multiple entry as goals of United States international aviation relationships with other nations.[7]

Since November 1977, the United States has renegotiated over a dozen new agreements with other countries,[8] and has, for the most part, been able to apply these principles to the agreements. The Netherlands Agreement[9] in early 1978 was an important first step.[10] Later that year, major liberal agreements were concluded with Bel-

---

5. *Id.*

6. Bermuda II, July 23, 1977, United States - United Kingdom, 28 U.S.T. 5367, T.I.A.S. No. 8641.

7. Statement concerning United States Policy on the Conduct of International Air Transport Negotiations, 14 WEEKLY COMP. OF PRES. DOC. 1462 (Aug. 28, 1978).

8. *E.g.*, Protocol Amending the Air Transport Agreement of 1957, as amended, Mar. 31, 1978, United States - Netherlands, T.I.A.S. No. 1507.

9. *Id.*

10. Agreement Amending the Air Transport Services Agreement of 1946, as Amended, Dec. 12 - Dec. 14, 1978, United States - Belgium, T.I.A.S. No. 9207.

gium and Israel.[11] For the most part, advances on the pricing side of the ledger, country-of-origin,[12] and, later, dual disapproval pricing articles, were adopted.[13] The Israeli Agreement, for example, allowed designated airlines to set fares freely; both governments, however, can reject a fare by agreeing that it is unacceptable. (This is an example of a dual disapproval rate article.) In addition, the new agreements contained no limitations on capacity; and the right of multiple designation was specifically provided for. In some cases, as between the United States and Israel, charters are explicitly allowed to operate for the first time.

Similar progress has taken place in other parts of the world. For example, some progress has been made during 1979-1980 in liberalizing air service in the Pacific. New agreements have been reached with Singapore,[14] Thailand,[15] and Korea.[16] Under the arrangement with Korea, new service was initiated last spring by Korean Air Lines, new low fares were offered by Northwest Airlines, and Braniff Airways initiated new service to Seoul.

In the South Pacific, despite some deep fundamental differences on aviation policy between the United States and Australia, a one-year country-of-origin pricing agreement was reached in December 1978.[17] Unhappily, fares remain high between the United States and Japan, capacity is tightly restricted by the Japanese Government, and U.S. charter carriers are not accepted.

Only a little progress (from the perspective of the United States) has been made in Latin America. Central America seems to be moving slowly towards a more competitive aviation regime. Nevertheless, a fairly liberal agreement with Costa Rica[18] was concluded and Guatamala is welcoming new United States service. While prospects

---

11. Protocol Amending the Air Transport Agreement of 1950, as amended, Aug. 16, 1978, United States - Israel, T.I.A.S. No. 9002.

12. "Country-of-origin articles" permit a subscribing government to control only the airline fares for traffic originating in its own country. In contrast, Bermuda I-type agreements granted a government the power to disapprove fares unilaterally.

13. "Dual disapproval pricing articles" permit designated airlines to set fares freely. A government can intervene to reject a fare thus set only if it secures the consent of the other government.

14. Air Transport Agreement, Mar. 31, 1979, United States - Singapore, T.I.A.S. No. 9001.

15. Air Transport Agreement, with Annexes, Dec. 7, 1979, United States - Thailand (unpublished) [reported in 80 DEP'T STATE BULL. No. 2035 (1980).]

16. Agreement Amending the Air Transport Services Agreement of 1957, as Amended, Mar. 14 - Mar. 22, 1979, United States - Republic of Korea, T.I.A.S. No. 9427.

17. Unpublished. On file at the Department of State, Washington, D.C.

18. Unpublished.

are good that other Central American countries will be willing to expand service, most governments in South America appear to remain convinced that both capacity and fares should be closely controlled.

The major irony in this new era in U.S. international aviation policy is that the form of our bilateral agreement with our most significant trading partner remains more restrictive than the norm. The United States and the United Kingdom have entered into an amendment to Bermuda II which, in the next four years, will significantly expand the service options available to consumers traveling between the two nations.[19] Unfortunately, the United Kingdom Agreement does not provide all of the benefits sought by the United States. But the potential opening of thirteen new gateways and the additional designations at Miami and Boston will make it virtually impossible for any particular carrier to exercise market power, and the new service will therefore maximize consumer options. Also, the United Kingdom's pledge to continue its liberal pricing policy and to consider additional liberalizations two years from now tends to insure the overall procompetitive nature of this agreement. The British have moved a long way from the limited confines of Bermuda II.

II. THE C.A.B.'S INVESTIGATION OF I.A.T.A.'S RATE-FIXING ACTIVITIES

The second, and by far the most controversial, aspect of the U.S. program to revise its international aviation relationships was the CAB's investigation of the IATA Traffic Conference Machinery, initiated in 1978. For legal reasons, this matter was styled as an "Order to Show Cause." The Board proposed a careful reexamination of the IATA ratemaking machinery and, as is appropriate under governing legal standards, placed the burden on IATA to demonstrate why approval, and hence United States antitrust immunity, should not be withdrawn from IATA price-fixing functions.

The IATA machinery, as initially approved by the Board in 1946, together with Bermuda II, formed the basis for the regulation of entry and pricing in international air transportation. Since rates had to be approved by both parties to the bilateral agreement, it made sense to allow the carriers on both sides to first agree on the rate structure. In addition, the Board's 1946 approval was prompted by a desire to correct a deficiency in the Board's statutory authority over international fares and rates. At the time, the Board's international

---

19. Agreement Amending the Air Transport Services Agreement of 1977, as Modified, Apr. 14 - Apr. 25, 1978, United States - United Kingdom, T.I.A.S. No. 8965.

authority was limited to preventing discrimination against United States air carriers under section 1002(f) of the Federal Aviation Act,[20] and to approval or disapproval of agreements filed pursuant to section 412.[21] The Board did not have any power to suspend and investigate tariff filings for international fares and rates. Since the IATA machinery, as proposed in 1946, required Board approval of agreed fares and rates under section 412 prior to their filing, it provided the Board with the necessary mechanism to exert control over such matter.

Other factors seem also to have played a prominent role in the Board's 1946 decision. At the time, Europe was struggling to recover economically from the ravages of World War II and European carriers were financially very weak, if they existed at all. United States carriers, on the other hand, held dominant competitive positions and were rapidly extending their operations throughout the world. Our European allies sought assurances that international air fares would be high enough to permit the development of their own airline industries. In particular, Britain and France feared that the United States would be unable to control the pricing practices of strong U.S. carriers, and insisted that these carriers operate at fares approved by international agreement.

By 1978, however, most of the reasons for approval of the IATA mechanism no longer seemed to apply. First, in 1972, Congress enacted section 1002(j) of the Federal Aviation Act,[22] which empowered the Board to suspend, investigate, and utlimately disapprove,

---

20. Pub. L. 85-726, § 1002(f), 72 Stat. 788 (1958) (codified at 49 U.S.C. § 1482(f) (1970 & Supp. V 1975)). "Whenever . . . the Board shall be of the opinion that any individual . . . or fare . . . received by any air carrier or foreign air carrier is . . . unjustly discriminatory, . . . the Board may alter the same to the extent necessary to correct such discrimination . . . "

21.

> The Board shall by order disapprove any such contract or agreement . . . that it finds to be adverse to the public interest, or in violation of this Act, and shall, by order, approve any such contract or agreement . . . that it does not find to be adverse to the public interest, or in violation of this Act. . . .

Pub. L. 85-726, § 412(b), 72 Stat. 770 (1958) (codified at 49 U.S.C. § 1382(b) (1970 & Supp. V 1975)).

22.

> Whenever any air carrier . . . shall file . . . a Tariff stating a new individual or joint . . . rate . . . or any . . . regulation . . . affecting such rate, . . . the Board . . . may suspend the operation of such Tariff . . . for a period . . . not exceeding three hundred and sixty-five days in the aggregate beyond the time when such Tariff would otherwise go into effect.

Pub. L. 92-259, § 3(a), 86 Stat. 96 (1972) (amending 49 U.S.C. § 1482(j) (1970).

any tariff containing a fare or rate which the Board deemed unlawful, subject only to final approval by the President. Second, the nature of international air transportation also had changed substantially. United States carriers no longer dominated the North Atlantic as they had in 1946 and the economic bargaining power and strength of foreign carriers was no longer in question. From the Board's perspective, it simply was no longer reasonable to assume that U.S. carriers alone had the resources to flourish in a competitive environment.

The prevailing transatlantic situation provided a good example of this new competitive environment. In the fall of 1977, Laker Airways initiated its low-fare "Skytrain" service between New York and London, causing a considerable reshuffling of deep-discount promotional fares across the Atlantic. IATA carriers were subsequently unable to agree to a new transatlantic fare structure to meet Laker's competition. The agreed structure expired in the spring of 1978, creating an "open rate" situation—each IATA carrier was free to set its own fares, subject to approval by the governments involved.

At about the same time, relaxation of charter rules led to lower fares for a greater portion of the traveling public. Responsive competitive filings by the scheduled air carriers followed. New low fare concepts, like *budget, standby* and *super-APEX* fares were implemented.

Thus, it was perfectly reasonable for the Board to conclude that these developments appeared to represent "an example of competitive economic forces at work," indicating that IATA was not "the sole mechanism through which . . . mutually beneficial aviation relationships could be structured."[23] And since there was no assurance that further progress toward a more competitive atmosphere would occur as long as the IATA ratemaking structure remained intact, it appeared that the time was ripe for a review.

The Board's Show Cause Order couched its concerns in terms of United States antitrust law. Board approval of IATA agreements, including the basic IATA conference machinery, brought with it automatic protection from prosecution under the antitrust laws. Without Board approval, these agreements would be subject to the Sherman Antitrust Act,[24] under which horizontal price-fixing is *per se* illegal. It was recognized long ago that the Board's power to immunize intercarrier agreements from the antitrust laws represented a significant departure from the rules that apply to United States industries

23. Order to Show Cause, C.A.B. 78.
24. 15 U.S.C. §§ 1-7 (1976).

generally—a departure that was a product of the special economic circumstances which convinced Congress to create an agency to regulate, indeed to protect, an infant, developing industry.

By 1978, however, the rationale for economic regulation of airlines was less compelling and it became more difficult to accept the continued subordination of the public policies underlying the antitrust laws without a *de novo* review of IATA. In fact, the regulatory standard that had long been quoted, but less than reverentially applied in this area, the "Local Cartage Test,"[25] required the Board to disapprove anticompetitive arrangements of this sort unless it could be shown that the arrangements were required by a serious transportation need or were necessary to secure important public benefits—a test that was codified in the law.[26]

The Show Cause Order generated vigorous controversy. The Board was not unresponsive to the concerns expressed by U.S. trading partners around the world and took a number of steps to limit the scope of the proceeding. Prior to the legislative hearing, IATA had proposed amendments to its structure which envisioned a reorganization along two functional lines—tariff coordinating conferences, dealing with ratemaking activities, and trade association conferences, dealing with "facilitation" activities. In the past, participation in both ratemaking activities and facilitation activities was required of all IATA members. Under the new rules, member participation in the former would be optional while participation in the latter would be mandatory. The facilitation activities consist of those functions such as uniform baggage handling procedures and interline ticketing, which did not appear anticompetitive in nature and most likely promote more efficient operations. In recognition of that fact, the Board granted interim approval to IATA's proposed reorganization and withdrew its tentative findings with respect to the facilitation activities. By this action, the Board narrowed its examination to IATA's role in establishing fares and rates.

As a final step, the Board withdrew its tentative findings with respect to IATA agreements establishing fares and rates between foreign countries, recognizing that the paramount national interests of other countries far outweighed U.S. interests in this area. As a result, the scope of the proceeding was ultimately limited to IATA's establishment of fares and rates to and from the United States.

After extensive proceedings, including consultations with foreign governments in Bogotá, Brussels, and Nairobi, the Board held a

25. Local Cartage Agreement Case, 15 C.A.B. 850 (1952).
26. Federal Aviation Act of 1958, § 412, 49 U.S.C. § 1382 (1970).

legislative-type hearing last October 1979 and issued a tentative decision.[27] In essence, the Board has determined to approve the new IATA traffic conference procedures for a period of two years, but also to deny antitrust immunity to any U.S. airline participating in the North Atlantic-Europe Traffic Conference discussions. Further, the Board has announced its intention to establish a staff unit devoted to handling all matters relating to the IATA Traffic Conference procedures.

On the basis of the evidence presented, the Board concluded that the traffic conference procedures, designed as they are primarily to establish the rates to be charged by competing airlines in United States-foreign markets, substantially reduce competition. But the Board recognized that not all nations share our economic philosophy. Therefore, the Board tried to strike a balance between the concerns of foreign nations and the principles that guide their national policies, and similar United States concerns for national sovereignty and policies. The IATA decision is an attempt to reach that equilibrium. The Board balanced the restrictive nature of these agreements against representations made by many governmental and private participants in the proceedings that restrictions are technically and politically essential for the smooth functioning of the international air transport network. In addition, the Board considered whether these public benefits could be achieved by alternative means having less anticompetitive effects.

The Board Members were impressed by the support given to the new IATA mechanism, not only by many witnesses familiar with the industry, but also by the U.S. Departments of Transportation and State, and by foreign governments which supported the procompetitive policies of the United States. The Board did not have the opportunity, however, to study first hand how the new traffic conference system will operate. Nor did the CAB have a firm enough grasp of the alternatives to say that less anticompetitive means were available to produce the same level of transportation benefits. The Board, therefore, concluded that the best interests of the United States, as well as of its international aviation partners, would be served by allowing IATA the trial period sought.

These concerns, coupled with the United States desire to work with and not against other nations in the development of a more liberal international aviation regime, convinced the CAB that a general denial of antitrust immunity at this time would be in error and that

---

27. C.A.B. Order 79.

two years of actual experience with the new structure would be beneficial. In two years' time, the new conference system will have been in effect almost three years and the CAB's new IATA group will have had the opportunity to observe the rate conferences and other IATA activities closely. In addition, during this period the opportunity exists to look at various alternatives to the conference system.

The decision to deny antitrust immunity for U.S. air carrier participation in the North Atlantic-Europe Traffic Conferences might seem at first glance to be inconsistent with other goals. In order to fully assess the new IATA structure, however, it will be most useful to have some basis for comparison. The North Atlantic-Europe market represents an area of the world which now, and for some time, has not depended on the conference system. In light of the competitive detriments that we believe flow from tariff coordination, it would not be productive to encourage a return to an IATA ratemaking mechanism in that area. In addition, the North Atlantic constitutes a large U.S.-originating market that already is quite competitive and served primarily by the experienced airlines of our major European trading partners. In recent years there has been an open rate situation and, for the last two years, the relevant traffic conferences have not even met; yet the situation is far from chaotic. Carriers have been able to interline pasengers, negotiate joint fares, and operate successfully despite the fact that no U.S. carrier belongs to the traffic conference. Since the other carriers operating on these routes are some of the strongest in the world, many of the general foreign policy concerns of the United States are inapplicable.

The CAB is convinced that its action will not jeopardize the ability of IATA to function smoothly, since the *status quo* is being preserved. For the same reason, the CAB does not believe its action discriminates against U.S. carriers, given that they voluntarily withdrew from the conference and have not indicated any desire to return. Should it appear that U.S. carriers are disadvantaged, remedial action can be taken before the end of the test period.

III. The International Air Competition Act of 1979

The third cornerstone of the new United States international aviation policy is the International Air Transportation Competition Act of 1979 (the Act),[28] signed into law by President Carter on February 15, 1980. The Act, modeled after the domestic Airline Deregulation Act

---

28. *Supra* note 2.

of 1978,[29] is designed to eliminate, as best one can in an imperfect world, government intervention into the entry and ratemaking activities of airlines flying to and from the United States. Thus, where multiple access is allowed under the existing bilateral agreement, the Act allows the Board to expeditiously license new carriers over multiple routings.

The most significant provisions of the new Act, however, are in the area of ratemaking, where the law provides carriers with a new measure of fare flexibility. The Board is charged with establishing a new "Standard Foreign Fare Level" (SFFL) for all international markets based on fares in effect on or after October 1, 1979. Once the SFFL is established, the Board is by law precluded from suspending any fare within a "zone of reasonableness" (five percent above or fifty percent below the SFFL, as adjusted for inflation). The only grounds for suspension of fares within the zone are very narrow. Thus suspension is proper only if the fare is unduly preferential or prejudicial, or unjustly discriminatory or predatory, or if suspension is considered in the public interest because of unreasonable regulatory actions of a foreign government with respect to a U.S. carrier.

For one time only, the provision for fare flexibility grants the Board authority to pass upon the reasonableness of fares in existence on October 1, 1979. The number of markets involved, however, is limited. Also, an oral evidentiary hearing before an administrative judge is required and the Board must complete any such evaluation within six months. Thus, while the Board can adjust the SFFL base level in some markets, that power is effectively limited by the procedures allowed under the new law. Nevertheless, the Board is hard at work attempting to complete the SFFL proceeding. Twelve markets which, based on available cost and revenue data, seem to have the highest excess profits, have been selected for review, and the Board expects to use its one-time power if circumstances warrant.

One other provision of the new Act should be mentioned. Over the years, Congress has been very troubled by the fact that U.S. carriers have been subjected to various discriminatory and restrictive practices by foreign governments. Up until now, the Board has had little statutory authority to move quickly in response to actions which unfairly inhibit the rights of carriers to compete. In a more liberal environment, equal opportunity is critically important. It is therefore appropriate that Congress has expanded the Board's power, subject to

---

29. Pub. L. No. 95-504, 92 Stat. 1705 (1978)(compiled in scattered sections of 49 U.S.C.A. §§ 1301 - 1541 (West Supp. 1980).

presidential approval, to summarily suspend, alter, or amend a foreign carrier's operating authority in response to restrictions imposed abroad.[30] While it is sincerely hoped that there will be no need to invoke this provision of the Act, the Board is ready to redress any legitimate grievance if the need arises.

IV. Domestic Deregulation and International Flexibility

Within this framework, two additional questions should be addressed: What are the lessons that can be learned from the United States' deregulation experience; and, is the United States seriously committed over the long term to insure a more flexible and open international environment?

The first question is becoming easier to answer as time goes by. If one studies carefully the domestic results it will be seen that deregulation has been a great success. Similarly, while the international environment is far more complex and the problems far more onerous, it is expected that we will begin to see international results that mirror the domestic case. Traffic growth in liberal markets, which are characterized by more open entry and pricing flexibility, will begin to exceed growth rates in those markets that remain more restrictive. We have already begun to see some preliminary indications of this phenomenon. On the North Atlantic, the traffic share of the liberal country group—Belgium, Germany, The Netherlands, and the United Kingdom—has increased from 58% of scheduled traffic in 1977, to 60% in 1978, and 62% in 1979.[31] These shifts have occurred despite efforts by more restrictive countries to maintain their market share. This limited data is not dispositive, but the evidence will become more compelling in the future.

As for the second question, no one should doubt the CAB's resolve. The decision to defer action in the IATA proceeding should not be interpreted as an indication of retreat from principle or a reversal of policy. Nor should one view the recently signed United States-United Kingdom bilateral agreement, which does not include multiple entry, as a return to a more restrictive regime. On the contrary, there are fundamental reasons to believe that United States policies will remain steadfast as the move toward open-entry and pricing free-

30. A 1972 amendment to the Federal Aviation Act of 1958 permits the C.A.B. to "suspend the operation of any existing tariff of any foreign air carrier providing services between the United States and such foreign country. . . ." 49 U.S.C. § 1482(j)(3)(A) (Supp. V 1975). A suspension order pursuant to § 1482(j) is subject to the approval of the President. 49 U.S.C. § 1461(b) (Supp. V 1975).

31. Immigration and Naturalization Service statistics.

dom is made and that, in the long run, these policies will be accepted and adopted in many major international airline markets.

V. Conclusion

Public policy favoring competition, as reflected in the Airline Deregulation Act of 1978 and the International Air Transportation Competition Act of 1979, has now been set firmly in place by the Congress and the President. Deregulation assures that there will be at all times a great reservoir of talent and resources ready and able to exploit any existing or newly developed market opportunity in the world at large. Moreover, the policy assures that U.S. airlines will be extremely efficient, able to adapt readily to rapidly changing conditions. These carriers, some existing, some still to be established, undoubtedly will press for access to international markets so long as there are profitable market opportunities—and profitable market opportunities will be assured if less efficient, protected carriers are not exposed to competition.

While general economic conditions may cause a downturn in demand with the distinct possibility that airline retrenchment will be required, there is no indication that such conditions will alter in any fundamental way the ongoing implementation of the new United States policies. Although one cannot rule out the possibility that such adverse conditions will temporarily influence regulatory decisions in particular circumstances, it seems clear that regulation by market forces—as opposed to direct regulation by government—will permit rapid adjustments that will minimize, if not at all times eliminate, the adverse consequences of a general economic downturn. Current policies will prove their worth in the days ahead, when it will be critically important that air carrier managements be free to react instantly to rapidly changing, and perhaps deteriorating, economic conditions.