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Abstract

Competition in Air Transport and Equality of Opportunity

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Air transport, unlike any other mode of transport, has been plagued with teleological anomalies. On the one hand, The Convention on International Civil Aviation (Chicago Convention) – the multilateral treaty applicable to air transport – says in its Preamble that air transport should be operated *inter alia* with "equality of opportunity" for all, without defining what the word "opportunity" means. Taken literally, this phrase grants every air carrier the opportunity to compete with each other without let or hindrance. On the other hand, the convention states that states have sovereignty over the air space above their territories and that no scheduled international air service may be operated over or into the territory of a state except with the agreement or special authorization of that state. This has rendered air carriers destitute of the liberty to operate internationally scheduled air services and the opportunity to compete fairly and equally with each other. In response, air carriers have devised various commercial measures to bypass this anomaly, such as code sharing, airline alliances and other forms of market access including the use of computer reservation systems. Another anomaly in air transport is that airlines are required to have the nationality of the state in which they are registered, with a requirement that an airline should be owned and effectively controlled by a majority of nationals in that state. This article draws on the genesis of the Chicago Convention through the conference which led to the treaty and analyses the original views of the delegates on competition, liberalization and the evolution of the phrase "equality of opportunity" in air transport.

Keywords: Air transport, Chicago Conference; Chicago Convention; Competition; ICAO; Liberalization

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