



Airlines for America®

We Connect the World

New Open Skies Agreements Needed to Maintain Competitive Benefits of Transatlantic Service by Airline Alliances

Today air travelers benefit from robust competition across the Atlantic and throughout the EU. The vast majority of these passengers fly on one of the three international alliances, which fly from the US to UK and then to Europe and also directly from the US to Europe.

Competition among airline alliances is one of the best developments for consumers made possible by the liberalization of international air transport. Underpinning these alliances is the US-EU Open Skies agreement and the EU's single aviation market, which ensure open access to competition. If post-Brexit airlines are denied open access to transatlantic markets and access to Europe via the UK, this will undercut the antitrust immunity and approvals that are the legal foundation for these alliances.

To maintain the benefits of US-EU-UK competition among the airline alliances requires new agreements that:

- allow US and UK airlines to fly from their home countries to each other's airports and beyond,
- allow UK and EU airlines to fly from their home jurisdictions to each other's airports and beyond, and
- do not restrict free competition with government limitations on prices, routes, schedules, or capacity.

Airlines sell tickets as much as a year in advance of travel. Therefore, there must be certainty by March 2018 how airlines will operate in these transatlantic markets. Replacing the current arrangements promptly is critical to maintain antitrust approvals and the complex airline networks that benefit travelers and the US, UK and Europe economies.

1. What is antitrust immunity?

Government antitrust approvals pave the way for airlines to coordinate within alliances. The three alliances include the world's largest airlines: **oneworld** (whose members include American Airlines, British Airways, airberlin, Finnair, and Iberia), **SkyTeam** (Delta Air Lines and KLM/Air France, Air Europa, Alitalia, Czech Airlines, and TAROM), and **Star** (United Airlines and Lufthansa, Adria, AEGEAN, Austrian, Brussels, Croatia, LOT, SAS, and SWISS). The carriers within each alliance closely coordinate their operations on transatlantic and EU-UK routes.

Coordination among airlines within an alliance improves travel quality, lowers costs, and thereby increases competition among alliances. On the other hand, close cooperation among competitors on operations, marketing, and prices is the kind of conduct that could be alleged to violate antitrust laws. The risk is highest in the US, where damages actions are available to private plaintiffs and government enforcement can bring criminal and civil penalties. EU competition law fines also can be significant, and the European Commission can act to block the alliances.

Government policy favors airline alliances that on balance improve competition to benefit travelers. The US Congress has authorized the Department of Transportation to grant to international alliances immunity from the US antitrust laws, if DOT finds it is in the public interest. No US airline alliance involving substantial coordination has gone forward without antitrust immunity from DOT.

Similarly, EU competition law covers concerted practices among competitors, but allows competitor cooperation that improves competition to benefit consumers. The Commission uses its authority to evaluate airline alliances and authorizes remedies to protect competition. With an EC decision to allow an alliance, airlines may proceed in their alliance.

2. Why is antitrust immunity needed?

The US-EU Air Transport Agreement, in force since 2008, replaced close control of carriers, schedules, and capacity with deregulated environments that allow US and EU carriers to compete on air service to each other's countries. Similarly, UK membership in the EU gave UK carriers and other Member States' carriers open access to compete EU-UK and throughout the single EU aviation market.

The US and EU authorities have relied on the competitive environment made possible by open access in their decisions that allow alliance carriers to cooperate. Brexit's removing open access on some routes will undercut the justifications for allowing alliances to serve those routes.

The US DOT has taken consistent position that it will grant antitrust immunity only if a US carrier's foreign alliance partner is from a country that has signed an Open Skies agreement with the US. Open Skies is an absolute prerequisite to antitrust immunity—and therefore a prerequisite to the implementation of an alliance with a US carrier.

The EU also has recognized the importance of open access in maintaining a competitive environment that will allow airline alliances. Under its own system of approving alliances, the European Commission has taken into account competition from other airline alliances in determining to allow new alliance agreements to proceed.

These are sensible policies. If airlines are to receive antitrust approvals to coordinate their operations within an alliance, then an open access agreement should have been implemented to ensure that other alliances are free to compete against the

immunized alliance. Removing open access would undercut the justifications for allowing alliances to serve the routes for which they have been approved.

3. What benefits does antitrust immunity bring to airlines and consumers?

Airline alliances with antitrust approvals bring substantial benefits to travelers. The most important aspect of their coordination is that an alliance's carriers jointly set the routes, schedules, and capacity that each will fly. This results in more frequent flights, spread throughout the day, with better-timed connections. Alliance carriers "codeshare" by selling seats on each other's flights. A passenger who buys from American a one-stop ticket to fly Dallas to Paris may fly the Dallas-London leg on American, then with a quick connection fly London-Paris on BA. The passenger's travel on this "on line" itinerary within one alliance is streamlined: the passenger buys one ticket, bags are transferred from American to BA, frequent flyer points are shared, both airlines lounges are available. The alliance carriers' cooperation on operations and sharing of revenues allows them to cut costs, and studies show this results in lower ticket prices.

Competitive air travel in these markets has a big effect on consumers and the economies of these countries. Air traffic among these jurisdictions supports hundreds of thousands of jobs and millions in GDP.

- Today 14 million passengers fly US to UK each year, representing a third of total US to Europe traffic.
- EU travelers rely on connections to and through the UK, especially from smaller airports. For some EU airports, UK traffic is more than 15% of total traffic.
- Half of passengers using UK airports are flying to or from other Member States. Many are traveling through the UK on the way to the US or other destinations.

4. How does Brexit threaten these benefits?

If no replacement agreement is implemented, in two years the UK no longer will have access to the single EU aviation market and the US-EU Open Skies agreement no longer will apply to the UK.

Removing US-UK open access removes the justification for allowing alliances to coordinate to serve that market; without an agreement that ensures US-UK competition, DOT could remove antitrust immunity for alliance service. Likewise, without an agreement that maintains EU-UK competition, the EC may withdraw approvals alliance coordination on those routes. Furthermore, removing US-UK and EU-UK access undercuts the transatlantic competition that justified the US DOT and EC allowing any alliance transatlantic coordination.

5. What solution protects competition, consumers, airlines, and economies in the US, EU, and UK?

To maintain the prerequisites for the international alliances to continue to serve transatlantic markets, it will be necessary to replace the existing US-EU-UK relationship with agreements that offer equivalent protections for competition in these markets. New agreements should include:

- A US-UK Open Skies agreement that allows service from US to UK and beyond.
- A EU-UK open access agreement that allows service between the UK and EU and beyond.
- A continued liberalized environment that allows competition without government regulation of commercial decisions on prices, routes, schedules, or capacity.

The US, UK, and EU should make replacing the existing open access arrangements a priority before March 2018.