4-10-2003

No. 3 - The Trans-Atlantic Relationship -- Aviation Policy: Clearing the Way to a More Open Market

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**Repository Citation**

Wilner, Gabriel; Davison, Heidi; Hunnicutt, Charles; Meskill, Timothy D.; Shipley, David; De Schutter, Bart; Grunow, J. Otto; Hollner, Lars-Olof; Bailey, Russell; Kiser, John; Mendes de Leon, Pablo; Moloney, John M.; Jensen, David M.; Bekebrede, Gerard; Maillett, Louise; Augustin, John; Dempsey, Paul; Donald, Robert; Jasinski, Paul C.; Gordon, Gerald; Sorensen, Frederik; Erkelens, Catherine; Bluth, Peter; Cohn, Robert; Klees, Pierre; and Diaz, Mario, "No. 3 - The Trans-Atlantic Relationship -- Aviation Policy: Clearing the Way to a More Open Market" (2003). *Occasional Papers Series*. 3.

https://digitalcommons.law.uga.edu/rusk_oc/3
Number 3

The Trans-Atlantic Relationship
—Aviation Policy:
Clearing the Way to a More Open Market
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—Aviation Policy:
Clearing the Way to a More Open Market

Panel I
*From Liberalizing Internal Markets Toward a More Open Global Market*

Panel II
*Technical and Operating Restrictions*

Panel III
*A New Foundation for Business Strategies and Public Policy*

Panel IV
*Airports and Infrastructure Requirements*
The Trans-Atlantic Relationship -
Aviation Policy: Clearing the Way to a More Open Market

This notable conference on compelling issues regarding opening up the transatlantic air transport market was a cooperative effort of The Dean Rusk Center—International, Comparative and Graduate Legal Studies at the University of Georgia School of Law, the Institute for European Studies at Vrije Universiteit Brussel, Brussels, Belgium, and the Institute of Continuing Legal Education in Georgia. Charles Hunnicutt, Robins, Kaplan, Miller & Ciresi L.L.P., former U.S. Assistant Secretary of Transportation, and Catherine Erkelens, Bird & Bird, Brussels, chaired and directed the conference at the University of Georgia School of Law, Thursday through Saturday, April 10-12, 2003, as one of the events marking the celebration of the 25th anniversary of the establishment of the Dean Rusk Center. Four panels composed of leading experts in the field of aviation from the private and public sectors discussed many issues of immediate concern in the drive toward liberalization. Panels I through IV – I-From Liberalizing Internal Markets Toward a More Open Global Market; II-Technical and Operating Restrictions; III-A New Foundation for Business Strategies and Public Policy; and IV-Airports and Infrastructure Requirements – were accompanied by a keynote address on each of the first two days and concluded with an overview session on the final day of the conference.
The Dean Rusk Center

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Timothy D. Meskill, Vice President of Market Analysis, Boeing

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Gabriel Wilner: My name is Gabriel Wilner, and I am the Executive Director of the Dean Rusk Center. We are your hosts working with the co-chairpersons, whom I will introduce in a minute. We are very pleased to have this distinguished group here for some very serious discussion interspersed with some humor. Charlie Hunnicutt is with us, so we are sure of that.

My first task this evening is to introduce the mayor of Athens. We are very pleased that she could be with us to open this international conference. Ms. Heidi Davison is a highly energetic leader and spokesperson for our community. She is an educator and an activist for local government which seeks the participation of all its citizens. Ms. Davison is a graduate of this university and holds bachelor's and master's degrees in education. She has been, and continues to be, an educator. She has been involved in a large number of community and university activities over the years. This has included service as a leadership development associate with the UGA Fanning Institute for Leadership, where she serves currently as an adjunct faculty member. We are, of course, very pleased and grateful to her for opening this important conference.
Mayor Heidi Davison: I am Heidi Davison, the mayor of Athens, and I am so happy to be with you all here this evening and to welcome you to what I think is a very special community. I was talking to my new friend from Frankfurt, and he called it a *little village*. I appreciated that description of Athens very much, because I pledged in my campaign to maintain Athens as a village community where we could enjoy each other on the street and out in the cafes downtown and in settings like this, not in our automobiles; so I appreciate that, and I will use that again. Thank you. I'm glad you feel that way about it; that makes me feel good.

I am so glad that you are here and that you are going to be talking about aviation. You probably know that we have a small airport here. I was telling my table mates that I did spend a great deal of time yesterday morning talking about transportation, which I don't claim to know a lot about, but it was about ground transportation. We do have an airport here, and it is an important part of our community. I know that I will learn a lot from our discussion tonight. I want to welcome you and to tell you that we are very happy that you are here. I hope that your hosts have scheduled some time where you can actually walk across the street and visit our downtown, which is part of our town-and-gown relationship. We have a lovely relationship, where the university is just right across the street from what we consider a very active and vibrant downtown. I can tell you that our downtown starts early in the morning at the coffee shop, and it ends very late at night at the coffee shop. We are closed only about four or five hours a day. So, you can find lots of good things to do down there, and it is right across the street. I hope you will get a chance to do that and to really get a feel for the community as well as the university. It is a beautiful campus. I am very pleased to be a part of that town-and-gown relationship and very honored to be a part of your event tonight. I always tell everybody when I go out, if there is anything at all that I can do for any of you at any time, please know that I would try my very best to do that. So if I can help any of you in the future, please know that I am available to you. I hope you have a wonderful time, and that you make some new friends and learn a lot, and that you will come back, because we would love to see you again. So thank you.

Gabriel Wilner: Thank you very much, Mayor Davison.

This conference is a joint venture of the Dean Rusk Center and the Institute for European Studies at the Vrije Universiteit in Brussels. The president of the Institute is with us this evening: Professor Bart De Schutter.
The co-chairpersons are first, Ms. Catherine Erkelens, who is known to many of you. She is a graduate of the VUB and a member of the Brussels Bar. She is now a partner at Bird & Bird. Her field is aviation and information technology. She has done both teaching and research at the university. Ms. Erkelens has been very active in putting together this program and we are all very grateful to her for that. The other co-chairperson, who needs no further introduction, is one of our eminent alumni who has been most faithful to this law school. He is also a graduate of VUB's program in international legal cooperation.

Charles Hunnicutt: Thanks very much Gabe. We're going to do the round of introductions and welcoming in the morning, so I won't spend a lot of time on that this evening. I do want to thank the mayor for coming to welcome us, and I want to thank Dean David Shipley for being here with us tonight. I want to mention, in addition, that there are two moderators for panels tomorrow. Since they will be making introductions, I just want to mention that we are so glad to have Professor Pablo Mendes de Leon with us from Leiden University. Not yet here, but arriving soon, is Paul Dempsey from McGill University, who is also a graduate of the University of Georgia law school and was actually in my class in law school. Before introducing our speaker tonight, I want to take the opportunity to introduce my friend, David Traynham, who is here as well. David is the director of strategy and planning for the Commercial Airplane division, D.C. office, of Boeing; but more than that, he is someone in Washington who everyone turns to when they are looking for good judgment and real expertise in any aviation issues that face us. People on all sides of every issue respect David's opinions and judgments, so I am delighted that he is here with us tonight.

Now it is my pleasure to introduce at this evening's speaker, Mr. Timothy Meskill, also from the Boeing Company. Tim is Boeing's marketing director for Commercial Airplanes. He is responsible for providing the data, research, forecasts, and identifying market opportunities for the Commercial Airplane group. Tim began his career at Boeing in 1977 as an airline financial analyst, conducting financial evaluations for airlines and their ability to make long-term investment decisions. He also has been assigned as an airline account manager, functional representative to the quality improvement center, manager of leased airplane coordination, and manager of industry communications. Tim was editor of Boeing's Current Market Outlook, the widely relied upon annual assessment of demand for world travel and the jet airplane capacity and aviation services that that demand requires. Prior to his
career at Boeing, Tim worked as a transportation industry analyst with the Civil Aeronautics Board. The Boeing Company is the world's leading aerospace company. It is the largest manufacturer of satellites, commercial jetliners, and military aircraft. Boeing airplanes represent three-quarters of the world's fleet, with more than 11,700 jetliners in service, proving why Boeing has been the world leader in commercial jetliners for more than forty years. The company is also a market leader in missile defense, human space flight, and launch services. In 2002, Boeing's sales were $54.1 billion from customers in 145 countries. We are extremely pleased that Tim could join us this evening. There is no one better to set the backdrop against which the discussions of the next two days should be set. I also want to publicly thank Boeing for being a sponsor and a generous supporter of this conference. Tim has graciously agreed to take questions and have a discussion at the end of his remarks.

Timothy Meskill: Market Evolution - I want to thank the mayor for graciously welcoming us here. I had the opportunity to fly last night. I got in late last night because flying from Seattle to Athens is not the easiest thing, and since I actually had to speak rather than just participate, I though I had better get here on time. So I had a chance to partake of your city. I have not been on a college campus in a long time, so I have The Red and Black. The most fun thing about this newspaper is what they think is front-page news. Chaos Erupts in Newly Liberated Baghdad is the headline. Then there is a long discussion about the Georgia flag, and I learned more about the Georgia flag and the fact it is changing now almost hourly. There is a search for a new basketball coach. But the best one—front page news—is, there is now a vote to make beer stronger. Only in a college town! It has been fun. Since I was here early and I had some time, I did read the Wall Street Journal. There were three articles in there that you may or may not have read, the first one of which is that British Airways is now going to retire the Concorde. It says British Airways, but apparently this afternoon Air France has finally agreed that, since they maintain them together, they are going to do it as well. Then there was the British Airways/American code share, which has been approved. The third one, which you may not have seen, is that Boeing won the order for ANA (All Nippon Airways Co., Ltd.), so we got forty-five new 737s. The reason I bring that up last is that my job is a forecaster. So now I have to go back to Seattle, and make sure I have those ANA airplanes in the forecast, that we have enough production. Because my job is to actually figure out what is going to happen in the future, then come talk to people like you and talk you into achieving what we have already assumed you are going
to do. That is why I am happy to come here. Your task here, which you have set out, is clearing the way to a more open market, and I am counting on you and groups like this working through it. The industry has a great deal to achieve. We have done an awful lot; we still have more to do. So I am here to encourage you and to work with you.

I applaud all of the conference participants as you take on your topic, *clearing the way to a more open market*. You have selected to address one of the fundamentals to this industry's success – free and open competition – throughout all aspects of our industry. There is simply no greater force than the market place. There is nothing that is more unforgiving on the one hand and so rewarding on the other. I think the trend is inevitable, the speed is only in question. Our collective future is at stake because constraints to competition will strongly influence whether or not aviation can continue to maintain its record of ongoing productivity improvements – assured only by an open market – that will pace future industry growth.

Global forces are changing our industry dramatically and provide tremendous opportunities for us to help improve the safety and efficiency of our global air transportation system. We have the potential of a good long-term growth market based upon global economic and travel growth. Our aerospace industry is moving quickly to consolidate a very fragmented industry to dramatically improve quality and productivity. Our advanced airplane and aerospace technologies are focused on enabling a global point-to-point, non-stop, safe and efficient air transportation. But the work is not complete. There still is much to accomplish, and that is why this conference is so important. It is about building the relationship on which to build the future of air travel over the Atlantic.

For an airplane manufacturer, a key relationship is between us and our airline customers; so it is very important to know what is driving them. In today's competitive marketplace, passengers drive airline strategies. What do passengers want? Safe, reliable service; shortest trip times (non-stop flights) with more frequency choices; low fares in comfortable surroundings.

Boeing's fleet mix forecast focuses on the evolution of airline service from the regulated era to today's more liberalized competitive environment. This evolution shapes and reflects passengers' travel expectations. Passengers want the convenience of more frequency choices, that is, more choices to fly where they want to go and when they want to go. Passengers prefer point-to-point
service, not circuitous routings through one or two connecting hubs. These two market conditions are what we call fragmentation. In other words, the market demands more new non-stop flights and frequencies, not increased airplane capacity or size. Airlines are responding to these demands with increasingly sophisticated networks, often leveraging alliance and code-share partners.

Deregulation in the U.S. domestic market led to international liberalization. Liberalization has had its biggest effect on the North Atlantic. A good example is the Chicago-Europe market. In 1984, there was one U.S. airline flight per day from Chicago to Europe: a TWA 747 flight to London. At that time, sixty percent of U.S. airline flights on the North Atlantic were 747s. U.S. flag carriers Pan Am and TWA served Europe largely through flights originating at their New York gateway. These flights were dominated by low seat-mile-cost 747s. Historically, U.S. domestic airlines such as United, American, and Delta provided Pan Am and TWA with connecting services to interior U.S. destinations. With liberalization, airlines previously limited to domestic services began to offer more schedule choice using the smaller, higher seat-mile-cost 767. These choices included non-stop flights to Europe from their U.S. hubs. Air travelers naturally chose to fly these non-stop flights to Europe rather than the more indirect connecting flights to Pan Am and/or TWA's Europe-bound New York flights.

In August 2001, United and American Airlines were operating twenty-two daily non-stop flights from their Chicago hubs to twelve European destinations using a mix of 767s and 777s. Several city pair markets were receiving multiple daily flights. At that time, seventy-three percent of U.S. airline flights on the North Atlantic were 767s and 777s. About four percent were 747s. The largest airlines in the market are Delta, American, and United. A significant share of the service they provide is from their domestic hubs.

We expect the forces driving North Atlantic market fragmentation will continue during the next twenty years. We project that airplanes ranging in size from 767s to 777s will provide approximately 200 airport pairs with new non-stop services by 2021. An example of fragmentation happening prior to the events of September 11 is British Airways' decision to fly Gatwick to Phoenix and Gatwick to San Diego non-stop with 777s, rather than using a 747 from Gatwick to Phoenix and then on to San Diego. Another example was Lufthansa's decision to serve Denver and Phoenix with non-stop flights from Frankfurt. Previously, passengers had to connect through Chicago.
In August 2002, the comprehensive flight schedule information database OAG shows nineteen U.S. flights daily to nine destinations. This reduction in frequencies is natural since North Atlantic air travel has declined significantly due to the weak economy and the effects of September 11. As air travel growth returns, so will frequencies and new destinations.

On the North Pacific, liberalization and the 777 are fragmenting service in a big way just as the 767 did on the North Atlantic starting in the mid 1980s. A quick look at how the 777-200ER was used in the North Pacific gives ample evidence of how today's long-range twinjets are reshaping air travel and airline competitive strategies by allowing non-stop flights that bypass one or more hubs. It is this market liberalization combined with the 777 capabilities that continues to create new market opportunities between North America and Asia. The 777 is proving to be the preferred airplane for the long haul for airlines. The 777 increases frequencies in existing city pair markets, opens new non-stop routes, and replaces older, less efficient jets.

Even with a slow economy and the aftermath of the September 11 tragedy, service continues to grow on the Pacific. In August 2002, there were five Asian airlines (China Southern, Korean, Asiana, All Nippon Airways, and Singapore Airlines) and three U.S. airlines (United, American, and Continental) operating an average of thirty-six daily flights on North Pacific routes with 777 equipment. Many other flights are being proposed in this market within a year's time. The 777 airplane already has gained a significant share of the transpacific market. A number of new 777 non-stop flights were launched in the last year including All Nippon Airways: Tokyo-Washington D.C.; American Airlines: New York-Tokyo; Asiana Airlines: Seoul-San Francisco, Seoul-Dallas; Korean Air: Seoul-Los Angeles; United Airlines: San Francisco-Taipei; and Singapore Airlines: Hong Kong-Las Vegas.

Governments around the world continue to reduce their regulatory roles in the airline industry. Government involvement in the airline sector comes in many forms, including full or partial ownership of airlines, regulation of domestic routes and fares, control of access to international route authorities, and limits to foreign ownership in domiciled carriers.

To be competitive and provide passengers with efficient, affordable air travel, airlines need to engage freely in network development across national borders. The result will be vigorous competition characterized by new entrants, exits by unprofitable carriers, and execution of alliance strategies.
Since privatization of national carriers often requires capital beyond the capability of local financial markets, many nations are revising rules governing the level of allowable foreign investment. The shrinking of government regulation is vital to sustain growth in commercial aviation.

A fundamental assumption that we hold is that after settlement of the war in the Gulf, world economic conditions will improve which will lead to improved corporate profits. Settlement of the war also will lead to the restoration of consumer confidence. Once these conditions have improved people will start flying again and ship more and more goods.

At Boeing, we spend a lot of time and effort studying the market. We have to. Understanding the market guides our decisions about the airplanes and services we offer to our customers. Our latest forecast for long-term industry growth are: worldwide economic growth will average 2.9 percent per year; passenger traffic growth will average 4.9 percent per year; and cargo traffic growth will average 6.4 percent per year.

The data that I would like to use in terms of illustrating our confidence in the future of air travel, I would like to obtain from you. It is a small enough group that I can do this. What I would like to hear from you is, when you did you first fly in your life? I was ten years old when we flew. It was 1957. No one else has to give their age. It was on a Lockheed Constellation; I still remember the airplane. It was a big deal. My family moved from Boston to Chicago. It was a move experience. I didn't fly again until later on when I was a teenager, and you fly back to visit the relatives; and I didn't start flying a lot until somebody else started paying for it, when I got a job in my twenties. Can anybody else remember when they first flew?

**Dean David Shipley:** 1963. Icelandic Airlines from London to what was then Idylwild. I think we were on a DC6. We went down in Glasgow, Reykjavik, Gander, and Newfoundland before arriving at what would be JFK.

**Meskill:** Do you remember why you flew?

**Shipley:** My dad was on a sabbatical. We took the boat over and came back by air. I got a semester out of school.

**Meskill:** Okay. Great. That is why I asked the question. It's a great story. Anybody else remember? While you are thinking of it, let me give you
another story. I ask the question as often as I can because you get great stories, one of which was: I had a group of Polish journalists, and we were talking to them. Poland has a rich history of aviation, so they all wanted to tell their stories and it was rather broken Polish in a number of cases. The best story was by this fellow who was well into his forties at the time. He said, "I was seventeen years old, and the first time I got on an airplane, I didn't land in it. I was at parachute school and I jumped out." So that's good. Who else remembers their story?

Unidentified Speaker: Eight months old, so I really don't remember it.

Meskill: Okay, great! Anybody else want to tell their story? He has made the point; that is what I want. Think about when you first flew; and since I have asked, I will guarantee you by the end of this conference, you will have remembered it. The next thing I want you to think about is, when did your parents first fly? Then, what about the younger generation: the nieces, nephews, the small children? I was ten years old; my children all flew by the age of three, and that is why the eight months here is interesting. If you ask the Chinese, they are actually about ten years behind. But, my point is, it is still the same: As you move through generations, you fly sooner in your lifetime, you fly more often, and that continues into your age as you become the senior, AARP. (They have a lot of great travel deals. So you know my age. They keep wanting to sign me up. I have not taken them up on it yet.) But, that is my point: The air travel will continue to grow. In the United States, three out of four, almost four out of five adults have flown—not everybody; you still will find some, especially when I talk to student groups, you find one or two. In Europe, it is not that many. People out of the U.K. fly; people in Germany fly; people up north fly; but the ones in the south do not need to fly to get to the warm water. Okay? So there is still a lot of potential there. In Japan, it is something on the order of fifteen percent or less. There is very little friends-and-relative Japanese flying yet. There is a lot in the United States because of its geography. Remember the culture in Japan. Your relative may live in the same house or certainly in the same village, and that is a fundamental difference. We could get into China and India and everything else, but we won't. The point is, as you move through time, people want to travel; they want to travel by air. So we think there is a sound foundation. Again, the industry has to size itself, shape itself, and be ready to take advantage of that.
Another fundamental assumption that we hold is that the demand for air travel—both passenger and cargo—and the resulting demand for airplanes result from the continued ability of all participants in the industry to improve productivity. With the exception of only a few periods of time, aviation has been able to accomplish this.

Passenger yields—the fare you pay divided by the distance you travel—is a standard metric used by the airlines to measure passenger revenue. In real terms it has declined for decades at approximately 2 1/2 percent per year. Air fares also have declined at about one percent per year. The twenty-fold fold increase in air travel since 1960 is due in large measure to the continued decline in air fares. From an airplane manufacturer's perspective, air fares dropped due to the technological improvements introduced to the system by jets in the 1960s, wide bodies in the 1970s, efficient twins in the 1980s, and even bigger and better twins in the 1990s. Airlines also have introduced major productivity improvements over time. For example, airlines have made great use of the significant improvements in computing power to streamline the reservations process to handle a growing number of passenger, to optimize maintenance and crew scheduling, and to maximize passenger revenues by managing air fares. The level of competition in the future—for all aspects of the industry—will strongly influence the amount aviation can continue to achieve productivity improvements and will pace future industry growth.

Along these lines, we think its vital that there be no reversal to two trends: There will be no return to government ownership of major carriers and there will be continued liberalization and deregulation on still-regulated flows.

Airlines are moving toward less government control. An examination of the shift toward privatization among today's top twenty-five airlines. Back in 1981, thirty-eight percent of service offered by these top twenty-five airlines was under government control. At that time Air Canada, British Airways, JAL, Lufthansa, Qantas, and Iberia all were controlled by their respective governments. Over the course of the last two decades these airlines moved to private ownership. Currently, out of the top twenty-five airlines in the world, Air France, Thai, and Alitalia remain under government control, and Malaysia Airlines, which partially was privatized during the 1980s, has reverted back to government control. All of these airlines have indicated plans to move toward privatization in the future. Today, only ten percent of service offered by these top twenty-five airlines is under government control. The top
twenty-five Airlines represent over sixty percent of total world ASKs (available seat kilometers).  [Top 25 = 62.2% of world ASKs].

We think that if governments are going to privatize their airlines, they have an obligation to provide them with the means to compete and with an open marketplace. One means of doing this is to have more liberal bilateral agreements with other nations. The world is moving in that direction and its crucial that the momentum not stop.

Back in the early 1970s the world's airlines operated in a regulated environment. Routes and rates were fixed, market entry was restricted, and international *flag carriers* often were required to serve commercial and political interests of their home countries. In 1978, the U.S. Airline Deregulation Act was passed, and the U.S. domestic market was opened. During the 1980s the European Commission launched a phased liberalization of European air transport, and The Netherlands and U.K. concluded the first *liberal* European bilateral. During the 1990s more than seventy liberalized bilateral air service agreements were negotiated worldwide. Also during this decade the European Union moved to liberalize member nations' air markets, Australia and Japan fully deregulated their domestic airline markets, and the Japan-U.S. bilateral was revised to permit more transpacific traffic (figure 11).

In the future, we are counting on the U.S. and U.K. to achieve an open agreement, further reducing restrictions on the remainder of North Atlantic travel. The intra-Europe market will continue to become open to the European Union member countries as they are admitted. Most markets between North America and Asia will move toward more liberalized air service agreements, although operations still may be restricted in some regions by airport constraints as opposed to government regulations. Over the next decade the air service agreements between North America, Central America, and South America will move toward open skies. However, certain markets are likely to remain restricted and under government control. The regional flows between Northeast and Southeast Asia are not expected to move to an open environment. And unless radical changes occur over the next decade, markets with China and the Middle East are expected to remain under restrictive air service agreements under close government control during that time. At present, we estimate that nearly one-half of world RPKs (revenue passenger kilometers) are flown in open areas. We think that continued liberalization will lead to nearly two-thirds of the world RPKs opened to market forces by year 2010.
In the future, we think that in this open market environment, competing airlines will offer passengers additional service frequencies wherever and whenever possible. Figure 12 shows how air travel has grown over time. The average size of airplanes has not grown. This can happen for only a few reasons: One reason is that airlines continue to open up new routes. The other reason is that they add new flights in the new markets as well as adding more flights in existing markets. This research tells us that growth in air travel has been met, not by an increase in airplane capacity/size, but by an increase in new non-stop markets (airport pairs) and by frequency growth. In fact, average airplane size (average airplane size = total available seat kilometers divided by total aircraft kilometers) has remained constant with a slight decline since the early 1990s. While air travel dipped in 2001 and 2002, we expect air travel growth to return to the long-term growth trend with the same emphasis on increased non-stops and frequencies to meet the demands of the traveler. Future success will be a function of how well each member of this industry–government policy makers, airlines, airports, regulatory authorities, and manufacturers–contributes toward meeting passenger and air shipper needs.

That is what we have in mind with our focus on the 7E7. On December 20, 2002, Alan Mulally, President and Chief Executive Officer of Boeing Commercial Airplanes, announced that the next new Boeing product will be a super-efficient, fast, middle of the market airplane: 7E7. Although our decision not to proceed with the Sonic Cruiser caused disappointment in several sectors of the aviation market, there was at least one notable exception: the airlines. Our customers were very clear in expressing their desire for an airplane that valued efficiency over speed.

So, with the question of speed or efficiency answered for now, the next logical question involves the choice of the size and range of the new airplane. The 7E7 is focused on meeting the future requirements of the middle of the market. This begs the question: why build an airplane for the middle of the market? After all, the current middle of the market airplanes–757, 767, A330-200–certainly did not set any sales records last year. Exactly how much opportunity exists in this segment called the middle of the market? To answer customer demands for speed and efficiency, Boeing offers the new 7E7. The new 7E7 uses Sonic Cruiser technology to bring speed, efficiency, comfort, and reliability to the airlines.
What is the 7E7? What is the middle of the market? How can Boeing serve the middle of the market? What is the future demand and timing? What is the right fleet? Boeing is committed to a safe and efficient air transportation system. We provide our customers with a wide portfolio of airplanes, aviation services, and customer solutions. We focus on solutions to the challenges the airlines face, from fleet planning and modifications to crew training. We support rapid fleet expansion through the sale or lease of previously-owned airplanes, regardless of their model or manufacturer. We offer worldwide distribution centers, web-based spares ordering, global inventory management, internet access to technical publication and data, and 320 onsite experts in sixty countries. We have created an organization to work with governments and industry to improve travel safety and security. We also offer a full range of digital documentation capabilities as well as route- and flight-planning services.

Boeing will continue to leverage its expertise. Boeing will continue to lead the industry with the best new products and services—customer solutions—to free airlines to focus on their core business. Boeing is committed to helping its customers and the industry succeed.

So I close this presentation by amending the beginning title, "Market Evolution," to become "Market Evolution–the Next Steps," and propose that what we are about to accomplish during the next few days is a part of an overall evolutionary process: To focus on "what are the next steps we can make" is our goal.
The Trans-Atlantic Relationship - Aviation Policy: Clearing the Way to a More Open Market
Friday, April 11, 2003 - Panel I

Introductions:

Dean David Shipley, University of Georgia School of Law
Gabriel Wilner, Professor and Executive Director, Dean Rusk Center, University of Georgia School of Law
Bart De Schutter, Professor and President, Institute for European Studies, Vrije Universiteit Brussel

Panel I - From Liberalizing Internal Markets
Toward a More Open Global Market
Moderator: Pablo Mendes de Leon, Director, International Institute of Air and Space, Leiden University, The Netherlands
Speakers:
J. Otto Grunow, Managing Director of International Affairs, American Airlines
Lars-Olof Hollner, Counsellor, European Commission, Washington, D.C.
Russell Bailey, Air Line Pilots Association, International
John Kiser, Chief of Multilateral Affairs, Office of International Aviation, U.S. Department of Transportation, Washington, D.C.

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David Shipley: This conference has been organized by the Dean Rusk Center, here at the law school, and the Institute for European Studies at Vrije University in Brussels. Let me add that both institutions are very appreciative of the generous support by the sponsors, Boeing, Delta Air Lines, and Federal Express. I also know that the staff of the Rusk Center has been working very hard on putting this conference together, and I am sure the same holds true for the staff at the Institute for European Studies. Plus, I appreciate the commitment of time, energy, and knowledge from Catherine Ėrkelens and
Charles Hunnicutt. As you all know, we refer to him as Charlie; but the other night, they were referring to him as Secretary Hunnicutt because of his prior position in the government. I attended the opening dinner last night and thought that Tim Meskill's presentation was excellent; very interesting and very enlightening. I am the one who remembered his first airplane flight, 1963. I was thirteen, and my family flew from London to New York City on Icelandic Airlines. I guess that was the bargain carrier of that era. I said that I recalled that we were on a DC-6; thirteen-year-old boys know planes—you know a DC-6 or a 707 or a B-17. We stopped in Glasgow, Reykjavík, Gander, Newfoundland, and landed at what was then Idylwild; I think it took twenty-four hours or more to make the entire trip. My mother said they served us venison on the plane, and that seems pretty glamorous for airline food. But you know thirteen-year-old boys; I was just hungry. It was exciting and flying was a big deal. I grew up in Champaign, Illinois, and have vivid memories of going out to the little airport for the University of Illinois and meeting my father when he would fly down from Chicago after being at a meeting: flying down on a DC-3, the workhorse for that airport; and that was Ozark Airlines. I am not sure what happened to Ozark, absorbed by somebody. We also went to air shows at nearby Chanute Field that was a U.S. Air Force base. I think it has been decommissioned as part of the air base closings in the United States in the last ten or fifteen years, but that was always fun to go out to those air shows. That was about twenty miles north of Champaign, and just last February my wife and I were in Seattle, where we spent an afternoon at Boeing's Museum of Flight; it was really a very enjoyable afternoon. I think Mr. Meskill brought Seattle weather with him for yesterday, because it was like that when we were in Seattle, sort of gray, misty, and cold. One of the highlights of that day at the museum was walking through a 707 that had been one of the first jet Air Force Ones for the White House. I think flight fascinates all of us, and I doubt if this group needs to be reminded that we are coming up on the 100th anniversary of flight, December 1903, the Wright brothers at Kitty Hawk in North Carolina.

Now I have lived in Georgia for five years, and I drive down to Atlanta's Hartsfield Airport on a regular basis. I think it is the world's busiest airport or maybe the second busiest, going back and forth with O'Hare. I also use our local airport once in a while. The University is encouraging us to use the local airport so we don't lose our service with U.S. Air. I am not an economist, but it is clear to me that September 11, the war in Iraq, and a sluggish economy (that was, I think, sluggish before September 11 but has gotten slower and slower) have been hurting the aviation industry. Here, where the traffic in and
out of Hartsfield has had and continues to have such a huge impact on economic growth in Georgia, dynamic growth in the last twenty years, the slowdown for aviation has been especially painful. Nevertheless, I think I heard optimism in Mr. Meskill's talk last night. But what does the future hold for air travel and the aviation industry?

I am basically an optimistic person and I am confident I will have a lot of choices about where to fly in and out of Hartsfield, but what will happen to ticket prices if some major carriers disappear or are reconfigured? Will I still be able to fly directly from Atlanta to some of the major cities in Europe? Will we have more carriers to choose from? Will additional aid from the United States government be necessary to keep some of our major carriers alive and operating? There are a lot of questions. I do not have answers, but I know from looking at the program that you will be discussing these issues and others today and tomorrow.

Before you start I want to take an opportunity to tell you a little bit about the School of Law and the University. I will keep this short, but for most of you this is your first trip to Athens. Briefly, this university is the oldest state-chartered university in the nation: 1785. We did not have students until 1801; I think University of North Carolina, Chapel Hill, had students before we did. The law school itself dates from 1859. It is the second oldest part of the university—only the College of Arts and Sciences is older—and we now have fourteen colleges and schools at the university and 32,000-plus students. The law school is a small part of this. We have only 640 students, plus about 20 L.L.M. graduate students, all from overseas, in our graduate program that is administered by Professor Wilner. Of our regular J.D. students, seventy-five percent are from Georgia and more than that stay here. Atlanta is a major magnet for our graduates, but fortunately some, like Charlie Hunnicutt and his classmate, Paul Dempsey, have been lured elsewhere. That is good for us to have our graduates around the nation and overseas. We have excellent students. This year we have 2700 applicants, and we will accept only about eighteen percent of them to get our class of 210. We are the eleventh ranked law school in the nation among public law schools. Our faculty is about 35. Let me add that we have a long tradition with international law and a commitment to our international law program going back to Dean Rusk, joining this faculty in 1970, and then Louis Sohn, Gabriel Wilner, Tom Schoenbaum, most recently Dan Bodansky, coming from the University of Washington in Seattle. Our international program, of course, is enriched by the work of the Dean Rusk Center, enriched by our L.L.M. students, and also
enriched by many visiting scholars who have come in at the invitation of Professor Wilner, including Bart De Schutter, Bart, how many times? Ten? Twelve? So we are excited about that and excited to have all of you here. Let me turn things over to my colleague, Gabriel Wilner.

**Gabriel Wilner:** Thank you very much, Dean Shipley. I will begin by saying that we are all grateful to Dean Shipley for his interest in the international program at this law school and the Dean Rusk Center. It is very important to have the help and support of the highest authorities at the law school.

This conference was thought about some time ago. We all realize that the transatlantic relationship is an essential one for both the United States and Europe. We have been thinking at the Center of ways in which we can play a small role in furthering the dialogue between North Americans, particularly the United States, and officials from the countries of Europe, as they are now grouped in the European Community and Union. Rather than inviting heads of state here to discuss the ultimate matters, a pragmatic approach is obviously the most useful and feasible one. We hope this conference will be the first of a number of conferences in areas of importance to this relationship that we will hold here. This one is in cooperation with the Institute for European Studies. The idea is that over a period of time, the Center will make this contribution and put together a grouping of persons who are particularly interested in this dialogue and can use the Dean Rusk Center as a part of the ongoing discussion, which is, of course, absolutely necessary.

We see now some immediate, temporary divisions which have grown up mostly on the political rather than the economic or social level, and the only way to get beyond them is through dialogue. So this conference, I believe, comes at a particularly important time. It demonstrates that the United States and Europe are and will continue to be in constant dialogue to bring about the cooperation that is essential for the entire world. I am most grateful to all of you for having come here today to be part of this dialogue, and we hope that the discussions will be fruitful and that you will take away and perhaps employ some of the discussion conclusions that we will have heard.

There will be four panels. This morning's is on the liberalizing of internal markets to a more open, global market. We will have lunch today at the East-West Bistro; we haven't renamed it U.S.-Europe, but of course that is what we really mean. You walk through the campus to The Arches where downtown Athens begins. This is to introduce you to life in Athens, the college town.
This afternoon, there is going to be a panel on technical and operating restrictions. At the end of the afternoon will be a discussion on new foundations for business strategies and public policy on both sides of the Atlantic and, hopefully, in cooperation in the future.

This evening there will be a dinner at a place called Trumps, for which you will all receive written directions, but it is also downtown. Then tomorrow morning, bright and early, at the Dean Rusk Center, Dean Rusk Hall on the fourth floor, where you were last night at dinner, we will have the fourth panel on airports and infrastructure requirements. There will be a coffee break and then what we call the overview, more or less an evaluation of what we have talked about, with contributions by the co-chairpersons and by members of the various panels who will still be with us tomorrow morning. There will be an informal lunch, and for those interested, there will be an organized tour of the University of Georgia and Athens by an expert here in Athens. You will see some antebellum mansions and other historic elements here in town.

I would like to echo the thanks of the Center to Boeing Corporation, to Delta Air Lines, and to Federal Express for helping to sponsor this conference. It is certainly important and reassuring to know that important corporations consider that this dialogue is a very important one.

Let me also mention the Institute for European Studies at the Vrije Universiteit Brussel, which is our partner in this meeting. Its president, Professor Bart De Schutter, is here with us today and in a few minutes, I am going to ask that he make a few comments. After that, we are going to hear momentarily from Catherine Erkelens, who is one of the two co-chairpersons of this conference and who is a partner at Bird & Bird in Brussels, as well as Charlie Hunnicutt, who is the co-chairperson for this side of the Atlantic and has played a very, very important role in making this conference possible. For the rest, we are delighted that you are here. I will say something about the Dean Rusk Center and our international programs this evening when we have our dinner, which also will be to celebrate the twenty-fifth anniversary of the creation of the Dean Rusk Center. In the meantime, let me ask Bart De Schutter to say some words.

Bart De Schutter: Thank you very much. Before takeoffs in transatlantic flights, there are always a number of announcements, so just consider my
short intervention as one of those safety announcements before the real takeoff and before getting to the real substance of the conference.

Dean Shipley, we are very grateful and appreciative of the fact that this transatlantic dialogue, which we initiated together with Gabriel and the Dean Rusk Center, is hosted by the University of Georgia School of Law. For many of us it is not a surprise. As you mentioned, we have had decades of different forms of cooperation, going from the summer Brussels Seminar for the UGA students, over the thirty years of the presence of Gabriel Wilner on the teaching staff of the degree of Master International and European Law at the Brussels University, to the at least a dozen alumni of the UGA law school receiving their LL.M. in the Brussels Program on International Legal Cooperation, one of those being Charlie Hunnicutt, today's coordinator. María Giménez, from the staff of the Dean Rusk Center, is also an alumna of our Programme on International Legal Cooperation. Many of our Belgian students have had the opportunity of studying here and completing their education. Many of our colleagues have been happy to contribute to part of the teachings within your law school, and now here we have this transatlantic conference.

Part of the program of the Institute for European Studies, on the one hand, is brand new, but it is built upon more than thirty years of experience of our master's degree. IES was recognized through the master's degree as a so-called Center of Excellence by the government of Flanders which attached to it a very interesting budget for the first five years. It was further recognized as a Jean Monnet Pole of Excellence by the European Commission.

IES has a kind of four-pillar structure. One is a teaching pillar, which is the master's degree in European and international law. We will start a second master's in the fall on Globalisation Studies. The second pillar is the development of e-courses, electronic teaching devices on European law and European institutions. The third pillar is the research pillar, focusing on issues in globalization, mainly around limits to intellectual property or the revisitation of intellectual property within the light of our global situation; some research in taxation, particularly focusing on the so-called Tobim tax and how one can develop forms of solidarity through taxation measures. Another pole is Justice and Home Affairs. We have been working particularly in preparing the implementing legislation for Belgium on the Council framework decision on terrorism, and we are working on a draft for the implementation of the convention regarding the financing of terrorism and fighting, controlling the
financial streams around terrorism. The third stream might be called human rights, where we have a couple of projects on the right to a decent environment or to a healthy environment.

We are very appreciative at the Institute for European Studies of our European contributors to this conference. We know it is always difficult to find time in your agendas to step over the distance and the time differences. It requires quite some determination to come and join what we expect to be a qualitative, high-level conference; but, as Gabriel said, there needs to be a dialogue; that is the whole idea here and also in the future. A next one on multimodal transportation will be in Brussels, where we have clashes within the U.N. between the Union and between the U.S. as to the legal regimes on land, rail, and sea transport. The next one might very well be back in the United States on the Kyoto issues, again where the U.S. has quite a different strategy, philosophy, policy, or at least behavior, than the European Union has. The whole idea of these dialogues is that we have a different approach, a quasi-scientific one, because academics are involved. We do not wear the hat of the representative, of the government official, so we can have an open debate on ideas, a clash of standpoints, and see in the dialogue to what extent some modalities for openings in blocked discussions within the official context can be found and eventually exploited further on by the participants in the conference. Later on we can become players in the official part of trying to find a balanced solution. So we are very grateful that you took out time and energy to join us here, and all together I am sure we can make it a very lively conference of a very high level. We may not have the largest audience, but we do have the quality of expert speakers in the audience, and that should be the guarantee of a day and a half of excellent work. Thank you very much.

Charles Hunnicutt: Good morning, I am honored to be co-chairing this conference with Catherine Erkelens, and I am going to make our words of welcome on behalf of both of us in order to save a little time to get us into our first panel. I also want to say thank you to Dean Shipley and Dean Wilner and Professor De Schutter for their words of welcome and reiterate what Professor De Schutter just said, that we expect to have a lively debate. All the nice words of welcome are going to be over in just a minute and I expect to really mix it up a little bit with some differing opinions on how we move forward. I really look forward to this conference with the quality of speakers on our panels to do more than just explain current positions, but to try to move us
forward in articulating some ways, as these proceedings get published, that policymakers can look to, ideas for moving us ahead.

In my law practice, I am involved primarily in international trade and international law. Having served in the government, I got exposed to a lot of the complexities of the policy issues related to aviation. I want to say up front in the beginning – on my behalf, not necessarily on Catherine's, though but I suspect it is the case – I am a proponent of liberalization. I say that in the interest of full disclosure of any bias that might appear as we proceed.

Industries of all kinds are moving toward more open and vigorous global competition as consumers demand new services and products. Participation in such a dynamic world economy can pose huge challenges as well as opportunities for both individuals and industries. The most promising way forward is to continue to rise to the challenge of competition in the international marketplace. North Americans and Europeans, like other peoples, can and must compete, not retreat, in the face of global competition. You cannot reap the benefits of free trade if you cannot move people and goods freely.

U.S. policy for the aviation industry was, during my time in the government and continues to be, based on three main goals. First, to ensure in the short term that the system is able to function efficiently and meet the economic and security needs of the nation. Second, over the long term to promote open international markets, fair competition, and minimal government intervention in markets. And, third, to establish common international standards that will ensure a safe, efficient, and environmentally sound global transportation system. The pursuit of such goals has not come easy, and obviously issues have and will continue to arise which hinder progress and challenge our resolve to achieve open and free international trade. I think we will all agree the current challenge in pursuing these three main goals, in the post-September 11-Iraq war period, gives additional need to heightened public safety and security.

In such an environment it becomes all the more imperative that the aviation industry and governments revisit and revise the existing transatlantic air transport market. We need to replace the isolated bilateral aviation markets that were created under the existing system of the Chicago Convention more than fifty years ago with a single, open, worldwide aviation market for the twenty-first century. While, for political reasons, the North
Atlantic may not be where this progress begins, for economic reasons, it is the market that really matters.

Recent events in the field of aviation are pointing to the need for liberalization. With some airlines having to file for bankruptcy or on the verge of doing so, the push for a more open system may become more viable. Airlines are now cutting unprofitable routes in an effort to drop costs to avoid sinking in the crisis. With the effects of the war, airlines on both sides of the Atlantic are looking hard at the bottom line, contemplating difficult cuts that will spare them from even further hardship. We must begin to consider the question of the continued utility of limitations on airline operations beyond the limitations in our bilateral air-services agreements. These limitations typically involve the restrictions that U.S. and European countries impose on the industry through domestic legislation and domestic regulation such as those now placed on the free flow of capital in the industry. The time has come to take a fresh look at the merits of many of these restrictions and, therefore, to ask whether they continue to serve the public interest in light of current conditions. Some of these issues include harmonizing standards among nations on aviation competition policy, aviation impacts on the environment, liberalizing ownership restrictions, updating airport and infrastructure requirements and taking a fresh look at other technical and operating restrictions. I have a belief that observable progress is being made on a global basis regarding aviation and liberalization and this has important implications for us all. For what the interstate highway system was to the United States in the last half of the twentieth century, the global aviation system will be to the world in the first half of the twenty-first century. And that is what has brought us all here to Athens today for this important conference, to discuss ways to clear the way to a more open aviation market.

As Professor Wilner mentioned, we have the four panels coming up. We had an excellent kickoff from Tim Meskill last night, and Catherine and I will be moderating two of the panels today. Professor de Leon from Leiden University will be moderating the first panel. We are so pleased to have him with us as a moderator today, as one of the truly leading thinkers on aviation policy in Europe. The other panel will be chaired later this afternoon by Professor Paul Dempsey, who is now leading the Air and Space Law program at McGill University, and we are so pleased that he could be with us as well.

Like the other welcoming this morning, I want to thank the Institute for European Studies, the Dean Rusk Center, and the Institute of Continuing
Legal Education here at the University of Georgia, in particular the staff of the Rusk Center who has just been tireless in its efforts to get us all here and make sure we are all settled in and ready for the conference. And also want to really thank the Boeing Company, Delta Air Lines, and Federal Express for their resource support making the conference possible. And with that, I would like to turn the conference over to Professor de Leon and our first panel. Thank you and welcome.

**Pablo Mendes de Leon:** In this University, in this School of Law where we are gathering today, the sun is breaking through. Athens is not only associated with ancient times but also with forward-looking ideas. The first ideas for democracy, as all of you will know, were born there. So, I am delighted to be here and I am very grateful to the deans who host this conference on the premises of this beautiful building and of this landscape.

This first morning session will identify the obstacles to clearing the way to a more open market, from internal markets, as the program says, to global open aviation markets. When one listens carefully to that title, a few ideas come up. Looking back again, one is reminded of the 1990s where the U.S. took the initiatives to conclude open-skies agreements worldwide, in all parts of the world; the European Community completed its internal market program; and the Association of European Airlines set up its project for a transatlantic common aviation area. So all that seems to converge toward global open aviation markets. Yet, the twenty-first century shed a slightly different light on those events towards convergence. September 11 demonstrated the vulnerability of the airline industry and questioned whether market forces could carry airlines, especially major airlines, in this framework. We also will be reminded this morning of another important event: not a security-related event but a legal event, which was the decision of the European Court of Justice of 5 November 2002, which introduced a few elements into this discussion which I will not anticipate at this very moment; because ladies and gentlemen we have very learned speakers here, highly knowledgeable people at this first panel who will certainly introduce the subjects toward opening markets in the transatlantic area and worldwide in a fascinating manner. I am not going to introduce them by reading their curricula vitae, which are included in the binders. I believe it is much more important to give them time to present their ideas than to present who they are. So in order to kick this morning session off, I give the floor to Otto Grunow of American Airlines. He is managing director of international affairs there,
and he will give his views on the evolution of aviation at work and the resulting need for regulatory changes. Otto, the floor is yours.

Otto Grunow: Thank you very much, Pablo; I really appreciate it. It is very nice to be here. My thanks to the University of Georgia for inviting me and for giving me this opportunity. It is particularly nice to get away from American Airlines headquarters for a few days—away from the corporate angst that we all are experiencing. As many of you know, who follow the day-to-day trials and tribulations of the industry, we are facing a ratification vote by three of our unions. The deadline is this coming Tuesday, and that will determine whether we need to move forward with a court-supervised reorganization under Chapter 11 or whether American will be able to reorganize consensually. So these are very poignant times for us.

Before we get into the more regulatory and legal details and framework, I thought I would take a quick look at underlying business trends that enliven this whole debate. I will clip through this fast and then get back into the regulatory-oriented issues. I would like to start with a snapshot of the current industry conditions and the impact on network carriers that U.S. domestic deregulation kicked off several decades ago. Then I would like to go on to talk a little bit about why I think the hub-and-spoke model has continuing viability, particularly in the international environment, and, because of our belief in the hub-and-spoke model, why we feel there is a real commercial need and compulsion to drive regulatory change.

As has been discussed before, industry revenue has been very tightly tied to gross domestic product and moved within a band of about 0.9 to 1.0 percent of gross domestic product for many years, from way back in 1981. Then, post-September 11 it really dropped off the charts.

So we are talking about a macro trend of significant revenue decline. And, while the industry is cyclical, I think we are seeing a fundamental shift on the revenue side of a type that we have not experienced before. I look forward to Paul Dempsey further discussing this issue because I enjoyed his article where he teed up the notion: Are we seeing qualitative or quantitative changes to our industry at the moment? I am not sure where we will come out on that debate. We certainly have been through tremendous down cycles before.
The key for American Airlines is to re-balance the revenue and the cost side of the equation. Whether that is just a question of tremendous cost-cutting or whether it requires hanging onto a revenue premium, is yet to play out in the marketplace. One of the primary economic factors that has impacted us has been the emergence of the low-cost, point-to-point carriers, and I just want to show you briefly what competitive pressure these carriers have been exerting. Low-cost carriers have been gaining market share since 1992, where they started off at about 7.8 percent of U.S. domestic available seat miles and that has now climbed to almost one-quarter of industry capacity.

Southwest, obviously one of the key players in the low-cost area, has tremendously increased its route network between 1994 and today: Obviously, they are not standing still. JetBlue, one of the other good quality contenders that has come into existence in recent years, has rapidly increased its current route network and projects even more expansion in the next four years or so.

So we have deregulated the U.S. domestic industry; we have witnessed the evolution of these low-cost carriers; we have contended with enhanced competition; we have suffered from over capacity. All of these factors, since 1978, have caused many of these smaller individual players to be amalgamated into today's six network survivors in the U.S. I expect some of our European colleagues will be discussing how a similar trend might be accelerating in Europe in the next few years.

To capture the result of all this in a Wall Street measurement, we can look at the stunning market value deterioration that the network carriers have experienced. Southwest Airlines' market capitalization exceeds that of all of the other network carriers in the U.S. combined. American Airlines' current market capitalization is just a small bar at the bottom of a graph, so if anybody here has a checkbook and wants to get into the business, please sign up!

I think all is not lost for the network carriers, however, and I think if we can fix the cost side of the equation, there are revenue opportunities that remain very strong, particularly on the international side. International opportunities are enhanced in part by the fact that the low-cost, point-to-point airlines cannot adequately serve international markets. I just made that assertion. I think I probably should have phrased it as a question. I do believe that their simplified fleet structure of low-cost carriers (LCCs), and the fact
that LCCs are dependent on a very simple fleet organization to keep their costs low, will preclude them from being effective carriers in the international market. There is a lack of density in local markets in international city pairs that I think will make it very important to continue to garner flow traffic in a way which is difficult with the point-to-point model. Those airlines that can transfer traffic at a hub in a seamless way will continue to be able to compete effectively in the international market.

There also are basic product complexity issues that are worth thinking about: As stage length increases, passengers need more comfort, carriers need better equipment, and customers require audiovisual entertainment. JetBlue has been able to offer some of the audiovisual equipment domestically, but international service adds tremendous complexity to the operation. For example, you need flight attendants who speak foreign languages, and you need to deal with customs and immigration. For all of these reasons, the simple point-to-point turnaround model using a Boeing 737 does not seem well suited to the international environment. And so, there is an opportunity for network carriers to earn a revenue premium.

Last night—unfortunately, we got here late after riding many planes, trains, and automobiles—we came in on the tail end of Tim Meskill’s remarks about the revenue premium and our chairman, Don Carty’s belief that we can maintain a revenue premium of about thirty percent over the revenue of low-cost carriers based on a superior product, driven in part by American Airlines’ international service and network. That remains to be demonstrated in the marketplace. If we cannot garner a sizable revenue premium, I think we will run into trouble very fast, because on the cost side of the equation, we just cannot bring costs down all the way to be on a par with the low-cost carriers. To put the cost calculations into perspective, we would need to cut about four billion per year in costs to be able to compete with the low-cost carriers, and that is if we are commanding a thirty percent revenue premium. If that premium on the revenue side goes away, then I think we would be looking at cost cuts in the eight billion per year range. For a company that has, say, eighteen billion per year in costs, cutting out eight billion requires a complete and utter change to the enterprise.

I think the opportunity for hub-and-spoke carriers in the international market is driven by the following very fundamental economic principals. I will just touch on them briefly because we have economists here who certainly can address this in greater detail. I believe there are *economies of scope* that
derive from the traffic aggregation potential of a hub. Every time you add a spoke to a big hub you are creating a lot more city pairs than when you add a spoke at the same cost to a small hub. That fundamental multiplier effect has not gone away just because of cost pressures that the low-cost carriers have triggered in the last few years. And let's consider *economies of density*: International hub-and-spoke carriers can reduce costs per available seat mile–unit production costs–by using larger gauge aircraft that consume relatively the same amount of scarce resources, such as slots and gates and maintenance resources, as smaller aircraft. Then there are *economies of scale*: By merging enterprises, traditional merger and acquisition cost savings can be garnered, e.g., putting together headquarters and other overlapping functions.

The recently published Brattle Report does a good job of pointing out why economies of scale are hard to garner in the case of international mergers and acquisitions where carriers have non-overlapping networks and carriers still need, for example, to advertise their product in Europe separately from advertising their product in the United States. For example, if American Airlines and British Airways hypothetically were able to merge, it would not mean that the advertising budget necessarily could be consolidated and stripped down. Antitrust immunity, of course, can play an important role in garnering some of these integrative efficiencies, but I do not think airlines have done a very good job up to now in using immunity to really get integrative efficiencies. But it is still relatively early days and alliances will continue to find ways to exploit these economies.

How does all of this theory translate into airline strategy? Airlines do things that reinforce scope efficiencies all the time. For example, we are very focused on building omnidirectional hubs that can draw traffic from all directions, unlike coastal gateways, which often are very directional. Our hubs can bring traffic in from all four corners and place it onto larger-gauge international aircraft, using not only narrow-body aircraft and regional jets but turboprops as well, and allowing seamless connections to occur at the hub. I do not think low-cost carriers will do well with interline connections at coastal gateways. That is demonstrated by the history of carriers like Pan Am, which lacked a domestic integrated network and therefore had difficulty of garnering sufficient feed for its international services. And of course we reward network travel through lots of traditional business strategies such as frequent flyer programs and corporate discounts and travel agency commission structures, all of which are aimed at saying, "If you travel on the domestic network, we'll reward you on the international network," and visa versa. So I think there is
a sweet spot to be found in putting a domestic and international network together that can be bolstered by these kinds of business strategies.

That brings us to the *product offering* itself. You know there have been concerns, and I heard a very good question last night on the tail end of the presentation, about whether the airline product has become a commodity: Can you really earn a revenue premium in a generic environment in which an airline seat is an airline seat? Well, I don't think commoditization is as prevalent in long-haul markets. There is an opportunity for product differentiation based on the quality of the service and the nature of the service. We constantly survey our customers to gauge their level of satisfaction. We are very heartened by the fact that when we talk to American Airlines customers—and we ask them to hold price and schedule constant—do they prefer to fly on us versus our competitors, about seventy percent tell us they like us and they would come back to us. So they do like our product; they just do not like the price they sometimes pay for it. That is why we need to learn to live with a smaller revenue premium, but we cannot reduce it all the way down to zero.

If you believe all of these business fundamentals, I think the regulatory conclusions follow fairly quickly. We need to find our optimal scope and scale on the international front. Hence, what should be the starting point of deregulation that needs to occur on the international front to make this possible?

One thing I want to touch on— a little bit of a digression perhaps—is whether the branding of airline services should be de-linked from air traffic rights. It is taken as a given that, if you are a marketing carrier in a code share relationship, you need to go to DOT to obtain an economic license or authorization to do that. We have walked ourselves into this cumbersome regulatory regime by viewing the marketing carrier as a prime contractor which sells its product to the customer and then turns around and subcontracts out the obligation to provide carriage to a partner which is a mere subcontractor. Therefore, the marketing carrier, a the prime contractor, needs the economic right and DOT-granted authority to do business. Alternatively, we could look at code sharing as a trademark relationship and scrap the DOT regulations. We could focus regulation on the underlying metal—that is the operating carrier—and require only it to hold the necessary licenses. If the operating carrier happens to carry another carrier's code, that could be treated
like a trademark license arrangement. It is not essential that code share marketing be subjected to the same burdensome regulatory requirements.

Some initiatives that I have seen recently from the TACA Group, where the component airlines are trying to use a single code to serve all of their Central American locations, is an example of attempts to get away from requiring each code share carrier to hold distinct traffic rights. And let me mention Lufthansa as well. I do not know the details of this, but if there is somebody who can address it, it would be very interesting to hear from them. As I understand it, Lufthansa would like to put its code on United's services out of places like Paris to the United States. Regulatorily, this would be a seventh-freedom marketing carrier turnaround service, not a fifth-freedom operation. Permitting this as a seventh-freedom service would require lots of regulatory changes. Alternatively, the industry and regulators could just view it as some type of trademark deal and not regulate it.

I think as we try to sustain the international hub-and-spoke model, we are going to need to liberate code sharing from these regulatory restrictions to allow hubs to grow to their most efficient size. Cross-border mergers and acquisitions may be the future of the hub-and-spoke carriers, and perhaps we should try to get there as fast as we can. If so, we need to implement many changes to the regulatory system to permit such mergers, but I will not dwell on these because perhaps my co-panelists will go into the details. But we need to eliminate the nationality rule and we need not to forget about infrastructure. It does not help us to be able to move traffic rights around and to merge carriers if the underlying slots and gates and other airport assets cannot be reconfigured to follow the corporate merger and acquisition structures.

As all of this goes on, we need to nurture good competition policy and make sure we do not have monopolies emerging. A non-sectoral approach would be best, with enforcement of competition principles by a standard competition regulator, not a regulatory agency like DOT. In the American Airlines/British Airways antitrust immunity case, we experienced first hand the difference of treatment that you can get from a sectoral regulator like the U.S. Department of Transportation versus a non-sectoral regulator like the U.S. Department of Justice. I see my colleague Paul Jasinski from BA is here. Maybe at some point we can share a few additional thoughts on that.
In conclusion, I would like to make the pitch that we should be heading for a package deal with Europe that allows cross-border merger and acquisition. A new deal should not be only about liberating traffic rights per se and allowing European carriers to fly seventh-freedom rights to the U.S. from any European gateway. Rather, it should really be about going the next step, to get rid of the nationality clause to allow us to find the optimum size for international networks. Thanks very much.

Pablo Mendes de Leon: Thank you very much, Otto, for introducing this morning's session in such an eloquent way and for hitting quite a number of points that I am sure the next speakers will come back to. By the way, it was quite striking that the first speaker is an airline representative, perhaps confirming the market-driven orientation of this conference. But, of course, airlines are still waiting and seeing what governments and regulatory authorities are doing.

Before giving the floor to the next speaker, I wonder whether one of you has one question which he or she wants to put now to Mr. Grunow. Otherwise we will have, in the course of this morning's session, more than enough time to do so. If there is a compelling question, an urgent question, we could do it now. If not, I am happy to introduce now Lars-Olof Hollner. He is the counsellor of the European Commission in Washington, D.C.. We have heard a lot from Brussels lately, and also a few references were made to the role of the Community in air transport matters in the previous presentation. I am sure that Mr. Hollner will clarify the Community or at least the Commission's point of view this morning, and I am delighted to give him the floor.

Lars-Olof Hollner: Thank you very much. I'm not 100 percent sure of the latter, but I will try my very best. I represent the European Commission delegation in Washington, D.C., and I am responsible not only for transport but also for environment and energy. I would like to start my presentation with a few words on what has happened internally in Europe over recent years. As you may all know, the EU air transport market was fully liberalized in 1992 through the third liberalization package, and I am a little bit too shy to go into too much detail of that liberalization package since we have the founding father and author and inventor of this package here in the room. But, let me just say that, in basic terms, this has been a success story. We have more routes flown, we have more competition, there are more people traveling, and there are lower economy-class fares. That is the main picture of what has happened internally in Europe since 1992, and it has gone rather
step by step. It has taken some period of time, but we have done more than just remove the market access barriers. There has been a period of restructuring for air carriers, and there is a protection of ascension and thin public service routes. We have tried to create the competition routes to create a level playing field in the Community, and there is a strong, strong commitment to air safety in the European Community. But there clearly are some disappointments, too, in the development in Europe. There has been little change in the structure of the airline industry. The carriers are still divided along national lines, and they are limited in their opportunity for expansion. And, very important, there has been no real development of multinational airlines in the EU. The capital cannot flow completely freely. There are still some limitations to competition, and that is the heart of the matter here, I think. What we have done in the internal market has not been reflected in our international relations; there has not been a similar or comparable liberalization on our external relationship. That is why we now try to see some change in the European Union. First of all, as I said, the internal liberalization package was from 1992, and it is now in these very days up for review of the measures taken in 1992. The Commission has presented a consultation paper. Everybody's interested parties are welcome to present their views. I think the deadline for that is in June this year (2003). So this is very much up to speed right now.

Then we have transatlantic relations: What to do on the external front and, in particular, in our relations with the United States? I would like to make a pitch for the Brattle Group Report that came out in December 2002. I have to apologize; I should have brought a copy of the executive summary with me. I have one copy, but it was in bad shape, so I cannot make photocopies of it. It is available on the web site of the Brattle Group for anybody who is interested. The Brattle Group received this task from the Commission to see what are the economic consequences of dismantling all barriers to competition and investment across the Atlantic. The Group came back with its report in December and made some very interesting conclusions. They said that the industry will become more efficient if you replace less efficient airlines with other more efficient airlines. It is not very, very sensational, but they have evidence to prove that. There would be an output expansion, an increased cross-border flow of capital, and my thoughts are that there would be some cross-border flows of labor. An open aviation area would result in an annual increase of up to eleven million transatlantic passenger and up to an additional 136 million intra-EU passengers, and those are substantial increases: twenty-five percent is the transatlantic increase and fourteen
percent intra-EU increase. The consumers, would reap benefits of up to 5.2 billion annually in economic benefits from free trade in aviation, and, due to this increase, there would be an additional output to aviation and related industries to between 3.6 billion and 8.1 billion dollars a year. So this is the Brattle Group and its findings in its study. We can discuss everything, but I think it is rather convincing that we have something to gain economically by dismantling the investment and competition barriers. So that is the economic step that we now look very much upon in the Commission.

A very important decision was mentioned earlier on: the decision of the European Court of Justice from November 5, 2002. The Commission had brought eight member states to the Court for their open skies agreements with the United States, putting into question if these agreements were in conformity with Community law. After several years of deliberations, the Court, in November last year, came with its verdict. It clearly said that in certain aspects these open skies agreements are infringements of Community law. The most important point where they found this was on the nationality clauses in the bilateral agreements, which discriminated between the European Union member states airlines. You are all familiar with this in these agreements when, in a bilateral such as the Belgium bilateral with the United States, the Belgian authorities can only designate Belgian airlines to fly directly to the United States, and British Airways, for example, could not fly directly from Brussels to the United States according to these agreements. This is an infringement of the right of establishment and this has to be rectified was the Court's opinion. There are also other areas where there are these exclusive Community competencies. There the member states have not the right to conclude bilateral agreements which have effects on these areas where there are Community routes and Community competence. As examples, in the Court decisions are mentioned the computer reservation systems, airfares, and slot allocations. Here I have to say, it is very important that the Court just addresses these three areas, because those were the areas which were in force when the cases were found. But this is evolving material, and there are more and more areas where there is or will become Community competence in the future, for example in the safety area, the security area, environment area, and on customs duties. So this is an ever increasing area where there will be Community competence, which I think is of great relevance to how we shall treat the bilaterals in the future. So the Court found that there are infringements of Community law, and the treaty is very clear on the point that this situation must be rectified and that there is not an option just to relax and do nothing; something has to be done.
What has the Commission done in order to rectify this decision? In November 2002, it came out with a communication that is a proposal to the Council, where they asked for a mandate to negotiate with the United States on an open aviation agreement covering the whole Community and covering all aspects of aviation. Also in November 2002, the Commission decided or requested that the member states should renounce their bilateral agreements with the United States in order to make it easier to negotiate an EU-U.S. agreement. I know that this decision or this request from the Commission has been interpreted in a rather negative way by our American friends; but I think it is very important to keep in mind that this is not an unfriendly act against the United States, it is just to get our own house in order in Europe. We need to do that in order to clear the way for an EU-U.S. agreement. So those are the political consequences of the Court decision.

There are, of course, several economic consequences. I think we will touch upon that later on. But it is quite evident that the European airline industry is now in a very difficult period, and it has been affected by the same consequences that have affected American Airlines, even if the terrorist attacks might not have had as great consequences for the European airlines as for their U.S. counterparts. There are extremely increased costs in security and in insurance. As was mentioned in the previous presentation, we have an increased activity of low-cost airlines, and we must do something about this. Now we have an opportunity because, by recognizing that the right of establishment was infringed in the open skies bilaterals by the Court of Justice, we must put an end to this situation. We have to try to find ways where the Community carriers can expand their services to international connections and, where mergers between Community carriers were not possible before because of these nationality provisions, there might be a possibility now in the future here.

The Court has, by this decision, opened a door to a fundamental restructuring of the European aviation industry. It is not American solution, but it may help the airlines in finding the answers. In that restructuring effort, of course, the shape of EU-U.S. aviation relations is very important. Will it be possible to lower the barriers to cross-Atlantic investments, will it be possible to increase cooperation in regulatory reforms, and will there be closer cooperation between the competition authorities on both sides of the Atlantic? All these problems are the same on both sides of the Atlantic. Why couldn't we start addressing these together? Also, in the United States, it is clear that one of the major problems the industry is facing now is how to get capital. If
there could be some easing of the right of ownership and investment groups, that might also assist the situation for the United States aviation industry. So let's put it on the table in our discussions. We are aware that neither John Barley nor Michelle Irale could come to grips with these investment groups. You have to involve the Congress, and also there need to be legislative changes in the European Union to achieve these things. But I think they should be put on the table at least.

As I said, the Commission asked the Council of Ministers for a mandate to initiate these negotiations with the United States in November 2002. As you might be aware, there is a mandate. The Commission had asked for a mandate many years ago, in 1996 I think it was; but the mandate the Council gave the Commission was only on the soft rights. The Commission now asks for a mandate to cover all aspects of an aviation agreement. When will the Commission get this mandate? This is the question we are asking now. The Council of Ministers discussed this the first time in December 2002. They had another go at it in March 2003, and in between there was a very important meeting by the heads of state and government of the European Union, also in March, where the leaders requested that swift mandate should be given to the Commission to negotiate with the U.S. I think that is very important that the highest, highest authorities in the European Union are eager that we get going on this. We hope that at the next meeting of the Council of Transport Ministers in June, a mandate will be given.

One reason why we do not have the mandate already is that member states have been keen on knowing what will happen in relations with the other third countries than the United States. To that effect, the Commission came out with a communication, which is a proposal to the Council on 26 February 2003, which relates to the relation with all other third countries than the United States. There the Commission requests a mandate from the Council to negotiate at Community level with all other third countries the questions concerning ownership and control and on other matters where there is exclusive Community competence. It gives a little room for the member states to negotiate with third countries on aspects of whether it is national competence. But this communication was presented in late February 2003, so it gave the member states a first chance to see how the Commission viewed relations with other third countries. Now this is in full preparation in our internal machinery, and I think the fact that we have that on the table will make it easier for the Council of Ministers to take a position on the mandate in June 2003.
I will summarize what the situation is: The Council of Transport Ministers have had two discussions on this, the heads of state and government have made their opinion very clear, and the next meeting of the Transport Ministers Council will be in June. Hopefully we will have a mandate at that time.

**Pablo Mendes de Leon:** Thank you very much, Mr. Hollner, for this update on intra-European developments, which certainly will give rise to remarks and questions and comments. Maybe one comment, which also includes a question, is: You say this open skies decision calls for changing nationality clauses and we now have to proceed swiftly in order to gather for such a change in order to open global aviation markets. However, in the first three months of this year, 2003, three European countries, Finland, Luxembourg, and France, have concluded new bilateral agreements with non-EC states without Community clauses. Also awkward for this whole process of trying to move forward is that France made that agreement in Paris with China and at the same time, the United Kingdom also talked to China and wanted to expand huge commercial opportunities for British Airways into China. However, the U.K. said, "We are now bound by this decision; we have to include a Community clause in our agreement with you Chinese," upon which the Chinese said, "No, we don't accept that." The French delegation did not even put the matter of Community clause on the table. So, how do these developments on what is the Community, or the Commission fit in the process? What can they do in order to stop these kinds of unilateral moves by member states in order to move forward to a more open market.

**Lars-Olof Hollner:** It doesn't fit.

**Pablo Mendes de Leon:** No, it doesn't fit of course, I know; but something has to be done or you stay where you are.

**Lars-Olof Hollner:** My personal opinion is that it does not serve the purpose very well to do this when we are in the process of renegotiating or rectifying the things that the Court has clearly found are not compatible with EU Law. The Court in its decision addressed only the eight bilateral and open skies agreements between eight member states and the United States. It is not because it was the United States that it was illegal; in general, a member state is not allowed to do that. What can I say? If the worse comes to the worst, the Commission has to look at this agreement and see if there is a suspicion that the force of this agreement is contrary to EU Law and let the Court
discuss it or examine it. I think that things will be clearer as soon as we have a clear mandate from the Council on how to deal with the United States and how to deal with other third countries. Then I think it will be more difficult to do it this way. I know that the member states have said very clearly that it has been a difficult situation for them. It has not been in a vacuum, but it has been an unclear situation since the Court decision and before we have a clear decision on how to go forward in the Community. When a mandate has been agreed upon, we will know better how to proceed.

**Pablo Mendes de Leon:** Thank you. Any other views or remarks on these remarks? I would have another question for Otto. I understood you to say that you do not see how to move low-cost carriers from the position where they are now, internal markets, whether that be the U.S. internal market or the intra-European internal market, to make them network carriers. I vaguely remember the SkyTrain concept, in the 1980s I believe it was, and that was a sort of low-cost carrier but transatlantic. Why would the concept which Sir Freddie Laker (Laker SkyTrain) then adopted, be applied or taken up by present low-cost carriers? This said, many people, including myself, also wonder whether low-cost carriers on the European side, such as EasyJet or Ryanair, would take advantage of the decision which was examined by Mr. Hollner earlier in order to try to be the first to exploit those advantages by saying, "Well, now we can fly, although we are a U.K. airline or an Irish airline, from Paris to Miami." Apart from the regulatory aspects of that on the U.S. side, there would not be any regulatory barriers anymore on the EC side. I felt that there were some more problems for Ryanair or EasyJet to do that, if I understood you rightly, although there was the SkyTrain concept, which proved that there should be some possibility and some opportunities for such a carrier to do so.

**J. Otto Grunow:** As a theoretical matter, I am not sure there is a crisp or tight answer to why international markets could not be served point to point, but just observing what has happened in the industry, you do not see that much of it going on. Not in the low-cost carriers, and they really have proliferated, not just Europe and the United States; you have WestJet in Canada and you have Gol (Gol Linhas Aéreas) in Brazil and Virgin Blue in Australia. You have lots of examples in different parts of the world and none of them have really made a serious attempt thus far. Then you have examples like Virgin Atlantic, which is more of a point-to-point operator. It has tended to stay in a relatively small handful of very dense origin and destination markets, like London-New York, where it does not really require a tremendous amount of
feed; so it can cater to that local market, particularly a high premium market like London. Why have they not expanded more and more rapidly? I guess it would be speculation on my part, but some of these operators are very tied; their corporate culture has been very successful but sometimes tied to an individual and that type of thing. It is not clear that their operations could withstand replication or expansion without losing some of the things that make them unique as a company, motivate their workers, and that type of thing. I think introduction of complexity is probably the biggest part of that. As I mentioned, I think as soon as you get into the international sphere, your corporate organization, by definition, has to be much more complex and sophisticated, and that drives your costs up and it is hard to manage. It changes your culture. Those are the kinds of things that I think make it harder for the point-to-point model. Once you accept that it is going to be complex, you need to organize your complexity most efficiently. That, so far, has tended to be a hub-and-spoke system.

**Pablo Mendes de Leon:** I have another reaction to one of the remarks you made on the position of Lufthansa when it comes to code sharing. I heard something about Lufthansa being eager to code share from Paris. With the help of Mr. Hollner, we now know why that opportunity could be exploited, the so-called seventh freedom, in aviation law terms, and that, according to this decision of the European Court of Justice, since Lufthansa has an establishment in Paris, it is supposed to have traffic rights from Paris to any point in the U.S. Suppose Lufthansa would say, "Well, I am going to code share with United on a route from Paris to New York City." I am very well aware of the fact that you cannot speak on behalf of the United States government, but how would you think U.S. DOT (U.S. Department of Transportation) would look at such an initiative, such a new opportunity?

**J. Otto Grunow:** I would think reasonably benevolently given the current developments in Europe, but we will see if John Kiser wants to address that or some other theoretical or hypothetical. Marketing carriers have not really sought these kind of seventh-freedom opportunities up until now. I do not know to what extent that has been driven by the regulatory framework. Typically, when you are the operator between points A and B in that local market, you are not necessarily anxious to have your marketing carrier partner compete with you on that route. You look to them for connecting traffic more typically. But in the Lufthansa case, they have a sales and marketing presence in France, as you point out, so they must have unique corporate customer relationships and unique travel agency relationships and other things like that.
that United does not have, that they would seek to exploit that density efficiency by getting higher load factors from Paris. So it makes economic sense; I suppose the DOT would feel that it is the thin edge of the wedge, though. Once you start allowing that on the marketing carrier side, you really are accepting a Community clause sort of vision in Europe.

**Unidentified Speaker** (no microphone): ....idea differentiating between the .... marketing.....the Europe side of KLM, marketing.....Northwest.... marketing to the United States, Northwest, and ..... Is there really much difference there? .....using KLM for example......

**Unidentified Speaker**: Regulatorily it is quite different, just because the underlining traffic rights are not endowed with a Northwest-KLM relationship. Obviously KLM is a sixth-freedom operator and is entitled to bring traffic from behind its homeland to The Netherlands and then take it to the United States in a very traditional sort of hub model at Schiphol (Amsterdam Schiphol Airport). As to the commercial side of your question, I think there are great parallels. In other words, you look to your partners for marketing strength in advertising and things like that in their home territories. If those home territories up until now have been your home hub, Amsterdam in the case of KLM, now we are saying, Lufthansa's not a French carrier, but it has strength in France, maybe more than United has, and so there is a incremental opportunity there.

**John Kiser**: On the code-sharing question, I think the more interesting question might be not what the U.S. Department of Transportation would do, but what the French authorities would do. If we look at another case where Lufthansa wanted to put its code on United Air Lines flights from Brussels to the United States, the Belgian authorities turned it down. So there are still apparently existing residual bilateral agreements and bilateral rights, or lack thereof, that have prevented some of these seventh-freedom initiatives.

**Pablo Mendes de Leon**: Thank you, John. I was waiting for Frederik to raise his hands. If you hadn't raised your hand, Frederik, I would simply have given you orders. You need to say something now, because it is time that you clarify something perhaps.

**Frederik Sørensen**: <from the audience without a microphone> .....
Pablo Mendes de Leon: Before I give the floor to Mr. John Kiser, I would like to say that everybody has that deep feeling that he or she wants to be remembered. It is a very human feeling, but I can help you to achieve that feeling by asking you to give your name when you ask a question after the presentations which will be made now, so that your words and your voice and your name will be recorded in the proceedings forever. What can be better than saying your name so that your words can be linked to your name and your name will appear in the proceedings of this conference, and there will be a microphone. There is a microphone, yes; but that is only after the speech of Mr. John Kiser, unless you have a question to him before his speech. One never knows.

I am very glad that John Kiser is here with us today to give the U.S. Department of Transportation point of view. He has a very important position there; he is Chief, Pricing and Multilateral Affairs, and he is in a great position to illuminate and to clarify U.S. view on liberalization.

John Kiser: Beyond Bilaterals - Thank you, Pablo, for the introduction. I also would like to thank our co-chairs, Charlie Hunnicutt and Catherine Erkelen, and of course the University of Georgia School of Law and the sponsors for making it possible to share some thoughts with you today. I chose the title Beyond Bilaterals for this presentation because, as Charlie said quite eloquently this morning, it has become sort of a truism that the bilateral system is no longer adequate as a framework for a global aviation industry. Much speculation and hope has focused on a possible U.S.-EU agreement as the hammer that might break the bilateral mold, unite two huge markets that have already been deregulated internally, and serve as a catalyst to broaden the benefits of liberalization and take it to the next level. Many comparisons have been done to demonstrate the size of the respective U.S. and EU markets and the potential benefits for joining them. ICAO year 2000 data show the U.S. and EU markets together comprise fifty-nine percent of a global total; but there is a large slice of the pie that is not U.S. or EU. Lest we be too Eurocentric or "Atlantic-centric," I would like to take you on, I hope, not too long a tour of aviation liberalization around the world to provide some global context and then come back to the U.S.-EU issues.

We can start by looking at the U.S. open skies agreements, fifty-nine of them to date, covering markets from Accra to Amman and Paris to Patagonia; next, the Kona accord, also known somewhat inaccurately as the APEC (Asia-Pacific Economic Cooperation) agreement, other open skies bilateral
agreements, regional agreements in the developing world; a real quick look at GATS (General Agreement on Trade in Services), which covers a very small part of aviation services; ICAO, which, as Pablo mentioned, sets global technical standards and does serve as something of a forum for discussing economic regulation and liberalization in the industry; and finally, we will come back to U.S.-EU possibilities.

Most of Europe has concluded open skies agreements with the United States, with the notable exception, of course, of the U.K. and three others, Ireland, Spain, and Greece. There is wide geographic distribution of the other open skies agreements. The Kona accord, known officially as the Multilateral Agreement on the Liberalization of International Air Transportation, was concluded in late 2000 between the United States and four other parties. In 2002, Peru and Samoa acceded to the agreement. Key features of the agreement are that market access provisions closely track the open skies model that most of the parties already had with each other; the agreement streamlines other clauses that were in the bilateral agreements and standardizes them; and perhaps the most path-breaking part of the agreement is that in the acceptance of designations of foreign carriers, the traditional substantial ownership criterion has been eliminated, although the effective control criteria were retained. All of the parties to the agreement saw elimination of the ownership rule as a step that would improve the prospects for attracting inward investment in carriers of countries with small capital markets. The agreement also eliminates the distinction between charter and scheduled services. In another innovation, the agreement establishes a new multilateral template by designing the seemingly boring, mundane clauses such as accession, amendments, and dispute resolution to accommodate more than two parties, and the lawyers for the United States and the other negotiators spent many hours debating the options and coming up with something that we thought would work. Through that we established a new mechanism for accession of APEC and non-APEC countries and economies. Finally, there is an optional protocol to allow for the exchange of seventh-freedom passenger and cabotage rights. Seventh-freedom cargo is already included in the basic agreement, and thus far, the protocol has been signed by Brunei, New Zealand, and Singapore.

There also are other open skies agreements in various parts of the world. Based on information compiled by ICAO as of about the middle of 2002, there were twenty-eight agreements. Some of the agreements include full seventh-freedom cabotage and liberalized foreign ownership provisions.
Also based on information compiled by ICAO last year is a listing of regional air services agreements: the Andean Pact in South America; CARICOM in the Caribbean; Fortaleza, also in South America. Banjul is West Africa; CLMV is Cambodia, Laos, Myanmar, and Vietnam; COMESA is eastern and southern Africa; ACAC is the Arab Civil Aviation Commission; Yamoussoukro is fifty-three African states. These could more accurately be called sub-regional agreements because they are still fragmented within continents. The developing countries, I think, recognized that their individual markets were too small to develop adequately in isolation and that by tying the aviation markets together they would also promote regional economic integration. Notwithstanding these noble objectives, these agreements still contain numerous restrictions to protect national flag carriers, and they have been slow to be implemented and to come fully into force according to their letter. By definition, of course, their membership is limited.

Not on this list or on the list of open skies agreements are countries like Japan, China, or Russia, either in a regional agreement or an open skies bilateral. There is a bit of irony if we think about a country like Japan here, because, although Japan cast itself in the role of champion of the third world at the ICAO conference last month in manning the barricades against too enthusiastic an endorsement of liberalization, the fact is that many of the developing countries are actually way ahead of Japan in concluding open skies agreements and regional liberalization agreements. So there is no Japan open skies agreement and no Northeast Asia regional liberalization agreement.

The General Agreement on Trade in Services does not apply to traffic rights or services directly related to them. It does apply to aircraft repair and maintenance when an aircraft is taken out of service, selling and marketing, and computer reservation services. The United States' position is that we see no evidence to date that progress in liberalization would be enhanced by expanding the current scope of the Annex, and there certainly seems to be no consensus among the GATS parties for adding more coverage. So I think it is fair to conclude there is no prospect for making an immediate or even medium-term leap from the bilaterals to a global system. The top-down global approach to economic rights does not seem to work.

Pablo mentioned the International Civil Aviation Organization. There are eighteen annexes to the Chicago Convention that establish global technical standards, a plethora of areas dealing with safety and security, and additional areas such as facilitation and environmental protection where there have been
bilateral and indeed U.S.-EU issues. The point here is that there is a home for harmonized international standards at the global level. I might add that ICAO has no formal enforcement powers regarding any of these standards, but it does have a certain moral influence. For example, after the United States filed the Article 84 complaint at ICAO regarding the EU hushkit regulation, it was the untiring efforts of the President of the ICAO Council that helped bring the parties to a position where a resolution could be found at the ICAO Assembly.

If we were to compare the elements of the U.S. open skies agreements, the Kona accord, and what one might expect to see in a U.S.-EU agreement, the primary elements have been in our open skies agreements since 1992 and they are virtually identical in the Kona accord. In a U.S.-EU agreement, in my view, there is every reason to expect that these market access provisions involving the freedoms, designations, capacity, and so forth, would be equally liberal. There are things more controversial and more in doubt. Some of our open skies agreements include seventh-freedom cargo; the Kona accord includes it uniformly. In the U.S.-EU agreement, I think there would be some controversy, but it is hard to imagine a U.S.-EU market access agreement that would not include seventh freedom for both cargo and passenger. Cabotage is in the Kona optional protocol and we would expect that the EU would want to bring it to the table. Ownership, control, and right of establishment are certainly at the heart of the debate within the EU about how to respond to the Court decision and what the EU negotiating position would look like when the U.S. and the Community eventually get to the table. Harmonized safety and security, environmental standards, and competition policy are items that the European industry, with considerable support from the Commission, has proposed be included in some fashion in a U.S.-EU agreement. The United States is certainly not inclined to bring into a U.S.-EU agreement anything that would compete with the already established ICAO standards at the global level. In the environmental area, of course, there are ICAO technical standards, certification standards, and so forth. Again, we would see little compelling reason to come to any kind of detailed U.S.-EU arrangements. Now that is not to say that the United States, for its part, might not want to raise issues such as night-flight bans and other environmental restrictions in Europe that call into question the value of the traffic rights that are exchanged in an agreement. I think that the idea of harmonized competition policy is just not on. If you talk to the U.S. Department of Justice and the Directorate-General for Competition, they would say the same thing. In practice, so far, we have been able to cooperate fairly effectively with the Commission on actual cases, alliances for example, and there are horizontal agreements
between the Department of Justice and the Community on competition enforcement. So there is already a structure for consultation and cooperation in the application of competition policy rather than the policies themselves.

Ownership and control, which is what everyone wants to talk about these days, not just due to the European Court of Justice decision but also because as others on the panel have said, even before that decision the traditional rules had been seen as a barrier to mergers, consolidations, and, in general, a more rational, efficient industry. Coming out of the ICAO conference, we have also had the view from the developing countries that the rules should be liberalized to permit greater access to capital for their airlines; and of course it will be a central issue in any possible U.S.-EU agreement and agreements between the Community and other third countries. It was the most prominent individual issue, I think, at the ICAO conference last month. The declaration that came out of it essentially says that states should accommodate other states that are looking at trans-border ownership and control arrangements.

ICAO 4th Air Transport Conference, Declaration, March 28, 2003:
-4.6 "States should give consideration to accommodating other States in their efforts to move towards expanded transborder ownership and control of air carriers, and/or towards designation of air carriers based on principal place of business, provided that clear responsibility and control of regulator safety and security oversight is maintained."

Note the last phrase, "provided that clear responsibility and control of regulatory safety and security oversight is maintained." Certainly no one in ICAO and in the aviation community wants to see flags of convenience develop. Certainly safety and security have to remain paramount and the lines of responsibility have to remain clear.

The right of establishment has been mentioned in some detail, I think by Frederik Sørensen. This is the clause of the treaty on which the European Court based its decision when it declared that the eight agreements challenged, and by implication others, violate EU law when they contain the traditional nationality-based ownership and control provisions:

Article 44 (ex Art. 52) of the EU Treaty: - "... restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State ..."
So the question is, what does it really mean in the case of airlines? The phrase *principal place of business* is in the EU licensing regulation (EU Regulation 2407/92, Article 4) which states that an airline will not be granted an operating license unless its principal place of business is in the member state that grants the license. Is there any inconsistency between the right of establishment in Article 44 of the Treaty and the specific provisions of Regulation 2407? We know that that will be a continuing discussion of these issues within the Community, particularly between now and June. A key question in that discussion will be what is meant by *principal place of business*. ICAO has done some work here and developed a list of characteristics that could be considered evidence of principal place of business, including items such as incorporation, aircraft registration, operations, physical facilities, taxes, and employment:

"ICAO: "Evidence of principal place of business . . . includes: the airline is established and incorporated in the territory of the designating Party in accordance with relevant national laws and regulations, has substantial amount of its operations and capital investment in physical facilities in the designating Party, pays income tax and registers its aircraft there, and employs a significant number of nationals in managerial, technical and operational positions."

I should note that this is guidance material, has no legal force, and has not been endorsed by ICAO member states. My own view is that it would be a mistake to try to define something like principal place of business too precisely, especially in an aviation services agreement. So, what does principal place of business mean in the real world? The answers will have great implications for the future of the European industry as well as others. What designations are the U.S. and other countries prepared to accept in agreements containing a Community ownership clause? So, is principal place of business a corporate headquarters, a significant base of operations, a box at your local post office, or something in between? We will be looking to see how the debate develops within the Community in the next month or so. What have other countries said about what they are prepared to accept? The only thing I found on the record in writing was a working paper by Singapore at the ICAO conference last month, where they said they would be prepared to incorporate an EU Community clause in their bilateral air-services agreements so long as third-party free riding can be prevented. I think the first conclusion we could draw is that, initially at least, these arrangements might still be concluded at the bilateral level. There would not necessarily have to be immediate Community level negotiations.
The free-rider issue is another major point. Cross-border ownership within the EU would not be permitted to result in non-reciprocated market access. There were similar comments from the floor from other delegations at the ICAO conference. So the willingness of third countries to accept some kind of Community ownership clause and exactly what they will accept has profound implications for the ability of EU carriers to achieve the concentration which they have been saying they need to survive the current crisis and prosper in the long term.

We have heard, of course, this morning and at every conference in the last couple of years about the current crisis in the industry, which is without doubt the worst in its history. It has been described in dramatic terms. The words upheaval, disaster, cataclysm, and apocalypse come to mind; and a common thread in the industry's response, I think on every continent, is a desire for governments to remove barriers to concentration, mergers, and reductions in capacity. Some economists might prefer the term creative destruction to describe what is going on in the industry. We know there is a lot of destruction; I am not sure how creative it will all be. Under the pressure of the crisis in the industry, the industry itself has been making many long-needed changes in their business models and operations. They are still struggling with it, and they have called for what I would describe as a creative destruction of government policies. How governments answer that call is of immense importance to the industry and the public in the long run.

What would the possible effects of reforms in areas such as ownership and control, right of establishment, and cabotage have on the overall public interest? We look at concentration and restructuring. Will it be euthanasia, putting the most miserable carriers out of their misery and having them just go out of business and liquidate or be absorbed by someone else? Or does it mean rehabilitation, where they are restructured and fixed and come back to compete more effectively? One effect would be on investment and profits: with concentration we would expect them to go up. Other effects that governments would be looking at would be on competition, at the network and gateway-to-gateway level, and in the domestic and intra-European markets. And of course, in the United States, an issue that has to be dealt with is national security, specifically the Civil Reserve Air Fleet (CRAF) program.

If we look at possible effects we would expect investment and profits to go up if the controls on ownership and establishment are loosened. We would expect competition at the network level to rise as broader, stronger networks
intensify their competition with each other, including gateway-to-gateway markets. There is always the risk that head-to-head competition in some gateway markets would decrease as the networks and remaining niche carriers fight it out, and you may see some of them withdrawing from some of those markets. Of course, somebody else may come in later, so it certainly would not be a static situation. In the U.S. domestic and intra-European markets, foreign entry and new capital have widely been seen as something that would boost competition. Again, however, you have the risk that as concentration in the industry rises, you could see competition decrease in some individual domestic markets and intra-European markets. Advocates of changes in ownership and control and the way we support the CRAFT program have argued that such changes actually may result in a more efficient, more economical way to accomplish the same objectives. Of course, it may not turn out that way, and that is a debate that will continue; we in the government will have to continue discussions with the U.S. Department of Defense. All of this will be quite messy, and the only thing certain is that there is no certainty and we cannot predict the results. But there are going to be profound questions for governments, not only looking at what we want to do with the European Union and the transatlantic market, but what the effects of changes in policies and statutes that have been there for fifty years or more will have on general public policy objectives. The classic free market approach would be to remove the overt government barriers and let competition authorities, which in the United States include the U.S. Department of Transportation, enforce the antitrust laws to deal with competition concerns.

Let's talk directly about U.S.-EU relations. It appears increasingly likely that the Commission will get its mandate at the June Council meeting, although we have heard these predictions before and the dates keep slipping. But while direct U.S.-EU negotiations would certainly be path-breaking in the broad market access area, Frederik reminds us that we did have formal negotiations when the Commission established exclusive competence in the computerized reservation systems area. Negotiations on a complete transatlantic package would indeed be path breaking. However, people talk as though the U.S. and the EU have never really sat down at the table. In fact we have a rich history of discussions. I think we had three meetings to talk about the possibilities of a U.S.-EU cargo liberalization agreement around ten years ago. That was shut down by the member states, who were not quite ready for the Commission to be that adventurous. After the partial mandate, I believe in 1996, I counted seven meetings, which covered a wide variety of issues. On competition cases, we had many meetings involving the alliance
cases, and it all worked out in the end. I know the industry was frustrated at the time it took to work out. I might add here that DOT was willing to enter into a more formal relationship with the Commission on competition consultation in the airline industry. Initially it was a Commission request, and we said we were not really sure we wanted to do that. Later we said that it is not a bad idea; but by that time, the Commission said it wasn't interested anymore. It was too tied up in the overall question of getting a general mandate for the Commission and they suggested that the idea be dropped for the time being. With regard to the environmental area, I did not count the number of meetings we had on hushkits because it would have been too depressing. The good news was that there was a solution, and the solution was indeed found by going back to ICAO, which establishes the technical standards at the global level. In that forum and through ICAO's good offices, we came close enough together to get a resolution at the ICAO Assembly which led to a withdrawal of the hushkit regulation and its replacement by a more comprehensive approach to airport noise management.

There have been lots of other informal discussions, in areas such as safety, security, and facilitation, all of which have become more necessary and prominent since September 11 and have included items such as the Advance Passenger Information System and Passenger Name Record requirements. I think that the good news in all of this is that, looking at the record over the last ten years, although we have had disputes, I think that the U.S. and the Commission have found that there is really more that unites than divides us, and we both share a fundamental commitment to liberalization.

So if we look at possible future U.S.-EU relations, one obvious question is whether an agreement would be just between the U.S. and the EU. Would it be a closed shop or would it be open to others? My own view is that perhaps the greatest potential in a U.S.-EU agreement would be to create a structure that would attract willing partners, either on a bilateral basis or possibly by joining with some other groups. The regional groups in the third world really do not present much of a potential, either for pursuing further liberalization among themselves or across oceans and continents. However, we can look at the Kona agreement; think about the possibilities of getting a transatlantic group and a Kona group together. U.S./EU/Canada and U.S./EU/Canada/Mexico were subjects of speculation a few years ago. At the present time, I do not think they are realistic. I think that Canada and Mexico both have their own very intense concerns about their industry as we do, and I think the pot will have to boil a little more in both countries and also
between the U.S. and EU. Cargo, traditionally has been thought of as something that can go first. The U.S. and EU talked about it, but it didn't go anywhere. The U.S. and others have had bilateral cargo liberalization agreements that preceded passenger liberalization. At the present time, we are working with our partners in the Kona accord to develop a cargo-only version that would be open to accession by other countries.

I cannot predict the future, of course, what U.S.-EU negotiations or a U.S.-EU agreement will look like. If I could offer unsolicited advice to my bosses and also to the European Union, it would be that the U.S. needs to be serious about looking at changes in traditional policies and continue to involve all our stakeholders, including the U.S. Congress. The European Union needs to involve its stakeholders, perhaps more intensely than in the past. The other advice I would give them in being creative and looking at changes in their policies and their outlook would be to reexamine what I would call a tendency to dirigisme and the idea that you have to harmonize across oceans things like safety, security, environment, competition law, and so forth. The other thing I would say for both sides is that the perfect is usually the enemy of the good or of good enough. I think if the EU, in particular, is too ambitious about what it insists be included in an agreement, not only will it be a long, long time in coming, but it would also significantly reduce the possibility that we would get other countries to join a new center of gravity or a new critical mass that could be represented by a U.S.-EU agreement and which, as I said earlier, I think represents one of the greatest potentials for a U.S.-EU agreement.

Now if governments and industry on both sides respond creatively and flexibly to all these questions, we have the opportunity to create a framework that would benefit airlines, consumers, and national and international economies generally. So I hope we don't mess it up. Thank you.

**Pablo Mendes de Leon:** Thank you very much, John, for putting the whole discussion on the transatlantic market into a U.S. perspective. As you have so eloquently demonstrated, this coincides—and I say this without any afterthought or undertone—with the global perspective and leads us to some challenging conclusions and provoking questions, opening the door for a plurilateral approach toward the whole market question. I am sure that there are quite a lot of questions, but I will refrain from asking them now because we have to terminate this session. We want to give some time to a person who has, according to ICAO Annex, the last word, the final responsibility, which is the pilot in command. In this session, the pilot in command is represented

Russell Bailey: Thank you. I, too, would like to say thank you very much to the co-chairs of this forum and to the University of Georgia for giving us the opportunity to participate here and to present some of our ideas about possible ways forward as the world takes a look at ways of liberalizing international air transport.

Briefly, who is the Air Line Pilots Association (ALPA)? ALPA represents the pilots of forty-five carriers in the United States and Canada—65,000 pilots at a whole range of carriers from Delta and United, down to a small operator out of Nevada that carries hazardous waste around and employs twenty pilots. We have heard John Kiser discuss a number of initiatives and various tracks along which liberalization ideas are moving, we have heard Otto Grunow talk about some of the economic reasons that air transport liberalization may be valuable to air carriers, and we have heard from Lars-Olof Hollner about the liberalization process in the European Community. I would like to say that ALPA is not opposed to liberalization as such. There have been benefits in the past to airline workers and pilots as a result of some of the liberalization that has taken place, some of the open skies agreements; and after initial reluctance to get onboard with respect to open skies agreements, ALPA has supported most of the negotiations that the U.S. has been involved in in recent years.

What I would like to do is note that U.S. pilots do have a number of concerns about some of the liberalization proposals that are being advanced now, and I think that the concerns that I am going to raise here are shared by our counterparts in Europe as well as by flight attendants here and in Europe. Basically, those are the employees who fly onboard aircraft that move from one jurisdiction to another in the course of the workday. They are potentially subject to multiple labor laws in the course of a workday. A number of items in the various liberalization proposals are getting ahead of the regulatory structure that applies to labor relations. It is not really surprising because the liberalization proposals contemplate transnational markets, whereas labor laws are national in scope. Thus, proposals like seventh-freedom rights, wet leasing, and ownership and control do not fit very well with the current regulatory structure that applies to labor relations. I am going to discuss here only our concerns with respect to some of the ownership and control change proposals that are out there, because that is the topic that seems to be getting
the most play these days and certainly would seem to have been the key topic at the ICAO conference last month. I also would like to take up Charlie Hunnicutt's challenge to try to make some proposals about ways forward.

Traditional bilateral requirements say that countries' designated airlines have to be owned and controlled by either the country that designates the airline or the nationals of those countries. Many countries also have ownership and control rules which also limit how ownership structures of airlines are set up. This framework has provided historically a link between the principal place of business, where an airline operates, and the labor laws that apply to that air carrier. I think to some extent those rules have their origins in other concerns, but they have applied fairly well with respect to labor. We have heard today that many view these ownership and control rules as a major barrier to moving forward with respect to liberalization, and various carriers have spoken out in terms of changing them. The Association of European Airlines has been most vocal in its view as a group that ownership and control rules need to change, and the European Commission certainly has picked up that notion in the various proposals it has made to the United States.

But one thing that none of the proponents of the change address is the effect of the proposed changes in the ownership and control rules on labor. As I mentioned, labor laws are national in scope, so the legal rights and protections and benefits that airline employees enjoy are those of the country where their airline is established. Elimination of the ownership and control rule would allow for airline owners basically to choose the country in which they wish to establish subsidiaries, or to establish operations of subsidiaries in multiple countries, or even to migrate from one country to another. And the decision on where they base their airline or have their headquarters might well be based on where labor standards are most favorable or economic for the carrier. The scope of the potential concerns for labor would really be limited only by the route rights that would be available to the carriers under air service agreements, and the effect would be to place at an increasing disadvantage those airlines of the states which had the most enlightened social or labor laws. It literally could lead to the downsizing or disappearance of home-based airlines with the various resulting tax, economic, and other social consequences.

Elimination of the ownership and control rules also would allow airlines to establish multinational airline holding companies with affiliated carriers in
various countries. Holding companies could allocate flying depending on which airline's labor or social laws are most favorable or which airline's employees are most willing to accede to management's demands at any given moment. Because labor laws are national in scope, there would be no effective way for employees of affiliated carriers in different countries to band together as a single collective bargaining entity. A single corporate entity, even though it may be set up in a holding company form, would be at odds with the fundamental notions that underpin (at least U.S.) labor laws, where there is an attempt to establish the right of choice of collective bargaining representatives as well as some sort of balance between providers of capital and providers of labor. I might note that these concerns are not hypothetical: you need only to take a look at the maritime industry to see what has happened to the U.S. maritime industry as a result of the development of flags of convenience. The U.S. maritime industry at the end of World War II was probably the largest in the world, and by 1990 it was virtually nonexistent except on a few maritime cabotage routes. In this regard it also is worth noting the designation provisions in both the Kona multilateral agreement and the model OECD (Organization for Economic Cooperation and Development) cargo air-services agreement where, in both instances, the flag of convenience issue received considerable attention by the participants in developing those agreements. Both of those have provisions that at least in part put some brake or some limits on the ability of carriers to transfer their work to foreign affiliates.

In our view, the development of labor laws that apply on a transnational basis to flight crews is something that can be done. I have heard people say this cannot be done, it is too big a project. I think it can be done if there is a commitment to do it. It does not have to be labor laws that would apply to all airline employees, but instead would apply to those employees who are in the workplace, the aircraft, that moves across borders. One of the things I was thinking as I was listening to the introductory remarks today was that a place like the University of Georgia, where you have a transnational law program, would be a good place for this type of project to be looked at in an objective environment. I just throw that idea out.

I also want to take up Charlie's challenge to offer a concrete proposal toward liberalization, so I will make one about how to get the European Community's ball out of the sand trap into which the European Court of Justice decision on bilateral ownership and control clauses has knocked it. This is not a novel proposal, really; the U.S. has offered a version of this to
some of its European bilateral partners. But Frederik Sørensen's intervention a moment ago also shows us that this proposal may face objections in some quarters. One way that has been proposed to satisfy the European Commission's concern that its carriers be allowed to operate out of other European countries and that seems to offer some promise with respect to our labor concerns, comes out of the OECD examination of possible ways to liberalize the cargo sector. After several years of deliberation and a lot of consideration of this topic, the formulation that was put in place in the model cargo air-services agreement substituted the ownership and control provision with one that required that a designated carrier have its principal place of business in the designating country, have its air carrier license issued by the country that designates it, and also be incorporated in the country that designates it. This proposal, in our view at least, seems consistent both with the ICAO rules on licensing as well as the European Commission rules, both of which link operating licenses to carriers' principal places of business. It seems to me that if the Commission would permit its individual countries to move toward a principal place of business framework, it would allow a true right of establishment, at least as contemplated by the literal language of Article 43 of the treaty establishing the European Community. Basically, it would permit any European Community carrier to establish an affiliate carrier in another European Community country as long as that country is the locus of the dominant proportion of this newly established airlines' business. And accordingly, it seems to us that the OECD approach could merit consideration as the basis of a way forward, and, with the addition of a very few words, could ensure that there is a necessary link between where the carrier does its business and the labor laws that apply. In our view, it would allow a workable interim arrangement while the U.S. and the European Community work to address how liberalization in international markets could move forward and also would address the question of providing an appropriate legal framework to govern labor relations on flights that operate in transnational markets. Thank you very much.

**Pablo Mendes de Leon:** Thank you, Russell, for this constructive approach toward establishment of principal place of business including the labor concerns. We have five to ten minutes left before we have to break for lunch. Yes, Frederik Sørensen.

**Frederik Sørensen:** My name is Frederik Sørensen. On slide fifteen of John Kiser's presentation, the last three lines talked about harmonization, harmonization, and harmonization. Now, as John rightly said, this is really a
presentation which was put forward by the industry association of European air carriers. It is not the way that it has been discussed among governments and the Commission.

I don't know what the Council may say in June of 2003, but if you replace the word harmonization with convergence, convergence on safety rules is something which is happening already. Cooperation between U.S. Federal Aviation Administration (FAA) and Joint Aviation Authority (JAA) would be replaced by FAA and EASA, the European Aviation Safety Agency, which will come into operation in September 2003. As John said there have been numerous meetings already on Convergence on environmental rules, and I think the discussion on convergence and on competition policy or competition rules is convergence on the application. There is no serious idea in Europe that one would try to change the competition rules or that one would try to change the antitrust rules, though one can talk about convergence in the application and cooperation in that sense. So, I think it has to be moved to that area rather than harmonization in the sense of creating something which is similar on both sides of the Atlantic.

The Community clause was discussed already in the early 1990s in the European Civil Aviation Conference (ECAC). Our member states basically had come to the conclusion that the nationality clauses were contrary to common sense but also contrary, although they didn't officially say so, to the treaty. And the idea to have a clause based on establishment and principal place of business was drafted in ECAC. At that time I took exception to that clause on legal reasons, saying that the principal place of business was not acceptable, but that perhaps one could get through if one instead said something like "a" principal place of business. That would take out the post box example that John showed. It would take out the tower air concept, where you sort of fly into an airport and then offload the ticketing and check-in staff and you fly out again having loaded those people back onto the aircraft. It is clear that there is no establishment in the tower air, nor is there a real establishment when you talk about the little mom and pop shop. But a principal place of business begins to indicate that it is serious establishment we are talking about, not just a casual one. But, as John also said, one then would have to begin to discuss and define what does "a" principal place of business really mean. But I think, in treaty terms, it would be possible to move from establishment general and up to a principal place of business, but that moving to "the" principal place of business would be illegal.
**John Kiser:** Well maybe if I could start by responding to Russ's question. A lot of the fair comments he made would have been on my slide, but the slide would have been too long. You would not have been able to read it. But there would still be a lot of questions, and I would heartily endorse his suggestion that the University of Georgia School of Law might take on a project of looking at some of the laws that apply, not only on ownership and control but also labor laws, to look at clauses in the bilaterals such as the Article on application of laws that says in flying to and from one of the parties, you apply with all the laws, which presumably include, if you got established there, all the labor laws. One thing Russ didn't mention that also should be done in any kind of review of the issue would be the rule of collective bargaining. I think there is a threshold question, how many of these concerns can be accommodated within the collective bargaining area rather than having the governments define the outcome?

And on Frederik's question and comments, I certainly like the word convergence better than harmonization. I think as we discuss this in the future, we will get a better feel for how much convergence the United States is willing to swallow and how much uncertainty and risk the European side is willing to swallow, and perhaps some of it comes from different legal traditions. In the U.S. we follow much more the common law and case law approach to a lot of questions, and most of Europe follows the Napoleonic code approach where everything is written down in advance and thou shalt and thou shalt not. I suspect our approach and position on this side of the Atlantic will continue to be, if we must agree on some general principles, let's agree on general principles rather than trying to determine the outcomes in advance.

**Unidentified Speaker:** John, if I could make one quick observation on that, also playing off the question of the collective bargaining and how much can collective bargaining take care of some of Russ's concerns? I guess I would just make the observation that there again the network carrier is your friend, because you have somebody like American with only thirty percent of our revenues coming from international operations and the other seventy percent grounded in a domestic system subject to U.S. labor law, thereby sort of setting up that leverage in negotiations to make sure that there is not an irresponsible labor substitution where you farm out the international flying to a low-cost Bulgarian producer or something. I just do not think that is a realistic concern when you have an international and domestic system linked from a network and business point of view. It opens up the question of do you
sort of cherry pick point-to-point flyers; but, I think that's an interesting question that will have to be resolved at the bargaining table.

**Russell Bailey:** I didn't mention it, but in your papers here there is an article that we wrote and that has been published in the *CCH Aviation Law Reporter* that addresses this issue precisely. The problem is at the moment the scope of the Railway Labor Act under which collective bargaining takes place, and the scope is not adequate to address international flights. There is actually a question about the scope of that law on the first flight from the U.S. gateway, and there is certainly a very big question about flights between two foreign points. I believe that collective bargaining cannot be the answer. We need a law that gives us effective collective bargaining on the international level, and that law does not exist. That would be the project that I think is incumbent upon all of us to look at. If you are going to have transnational airlines, you need a transnational labor law, so that there can be effective collective bargaining, because we do believe that collective bargaining is a place to resolve many issues. We are just saying that the current legal framework does not permit effective collective bargaining.

**Pablo Mendes de Leon:** The floor is to Paul Dempsey.

**Paul Dempsey:** I am Paul Dempsey, director of the Institute of Air and Space Law at McGill University, a sister institution to Leiden. (laughter) Now I have forgotten my question. (laughter) The U.S. Department of Transportation's inspector general has issued a report that calls into question the nationality of DHL, as to whether it is or is not a U.S. citizen. If it is not a U.S. citizen or owned and controlled by United States citizens, then is the DOT obliged to strip it of its certificate, deny the ability to engage in cabotage in the United States? And what are the implications for this effort to liberalize ownership and control internationally?

**John Kiser:** In answer to the first question, "what would we be obliged to do?" I guess that the quick answer is–I am not sure because I don't have my legal staff with me–but presumably, if we looked at DHL's ownership and control again–I can't remember how many times the DOT has looked at it–we would come to certain conclusions about what their ownership and control is. Without the legal staff here, I would not want to leap too quickly to conclusions about what the remedies would be. The remedies for a situation like that could be for the corporation to fix it rather than to have the government peremptorily pull its license, or the ownership could change. I
think the answer may be to a question you did not quite ask, but which is along the same lines: implications for liberalization. So with things like DHL questions, I think what you do not do is do what has been proposed in legislation in Congress, to really roll things back and say that the U.S. Department of Defense cannot even contract services out to carriers that are not effectively owned and control by U.S. citizens. There is a large debate about whether there are better ways to achieve the objectives of the CRAF program. I do not think what we want to see is legislation that rolls things back and makes it even more difficult to look at the options.

**Pablo Mendes de Leon:** Thank you. I have one question for Otto. I have to ask it. I heard Otto this morning saying, we, American Airlines, are established in Delaware. (laughter) Does it mean that you have your principal place of business in Delaware. How should I see that remark in the context of the discussion we had this morning?

**J. Otto Grunow:** I guess the way to look at it would be–principal place of business is in Dallas-Ft. Worth and we technically are incorporated in Delaware, so we have in a different state a flag of incorporation convenience that has been driven by historical reasons. Delaware incorporation laws were favorable and harmonious and well developed, etc., so certainly it conceptually is an example of somebody shopping for a different place to set up an aspect of their operation. But it is a very far analogy from the kinds of concerns that labor would be worried about or safety and . . .

**Russell Bailey:** Could I just follow up on what Otto said? I think the difference between the U.S. and the European Community in this regard is that it does not matter which state American Airlines incorporates itself in, because for aviation purposes, we have made a decision that aviation is a federal enterprise and we have a single transportation agency and a single certification agency. We also have a single set of labor laws that applies to the entire United States, where, on the other hand, the European Community still has fifteen civil aviation aeronautical authorities and it still has fifteen sets of labor laws. The labor concern is that the European Community has established a transnational market right there–the fifteen states and you have ten more coming in next year–but they have not taken the next step. They have not really made themselves a single enterprise for a lot of other purposes, such as licensing and labor law. I think it does not make any difference where American Airlines incorporates in the United States, but it makes a huge
difference where a European airline incorporates within the European Community.

**Pablo Mendes de Leon:** That was precisely the afterthought of my question, Russell, and the tax laws have not been harmonized. EC member states look at taxation in very different ways, so that causes the relevance of the term principal place of business.

**Lars-Olof Hollner:** It is true that we have not harmonized all aspects of economic life in the European Union yet, but we are on our way. We are converging, and we have done a lot also in the aviation and security and safety areas. So I take the point that we are not the fifty states of the United States, but we are very much on our way there.

And finally, just for the record, on this creative thinking on the principal place of business: Of course the Commission has analyzed that proposal even if it was not directed to the Commission but to the member states; but we have our done own analysis, and I think we came to the same conclusion as Frederik mentioned before that it would not help us out of this question. But I take your point on "a" principal place of business. Bring that home and see what people think about that.

**Pablo Mendes de Leon:** Thank you very much for your attention.
Charles Hunnicutt: It is my great pleasure today at lunch to introduce our speaker, Mr. John Moloney. John is the Director of Regulatory and Industry Affairs at Delta Air Lines. He is responsible for Delta's international and regulatory activities in the United States and the thirty-two other countries served by Delta. In this position he also represents Delta on international aviation issues before U.S. and foreign governments to advance the company's international interests. A longtime Delta employee, John previously was director of international government relations at TransWorld Airlines. Prior to working for air carriers, John worked at the U.S. Department of Transportation Office of Policy and International Affairs and at the White House for then-Vice President Bush in the Reagan administration. John is a real leader and highly respected in the aviation community in Washington.

During the past year, Delta, like all airlines, continued to feel the serious financial blows from the post-September-11 industry turmoil and the slumping economy. Despite industry stress and financial pressure, Delta remains an industry leader. It currently operates over 800 airplanes. It is the second largest airline in terms of passengers carried and third largest, as measured by operating revenues and passenger-miles flown. Delta is the leading U.S. transatlantic airline, carrying more passengers on these routes than any other U.S. carrier. I also want to mention that Delta Air Lines is closely linked to the University of Georgia through the Delta prize for global understanding. Delta and the University joined together in the late 1990s to create this
international prize, which recognizes efforts to advance understanding and cooperation among cultures and nations. Recent recipients of the award are Desmond Tutu, Jimmy and Rosalyn Carter, and Mikhail Gorbachev. Delta's commitment to this program and its desire to foster intercultural understanding is highly commendable. We are extremely pleased that John could join us today and for Delta's generous support of this conference. If time permits, I know John would be pleased to take some questions at the end of his remarks. Please join me in welcoming John Moloney.

**John Moloney:** Charlie, thank you. That was a very nice introduction. In fact, I hope it is recorded so I can share it with my parents! I liked that. First of all, I know you were expecting Scott Yohe (Senior Vice President for Government Affairs, Delta Air Lines); I am not Scott Yohe. I obviously have a much lower title and, sad to say, a much smaller salary. But, Scott sends his regrets. He is back in Washington, because we have a very large appropriations package before Congress. Not a state aid package, might I remind our friends from Europe here, but an appropriations package to reimburse us for some unfunded mandates that we recently have had.

As Charlie mentioned, I have been covering international affairs for the past seventeen years for Delta and TWA, and I have had the privilege of working with many of you for many years. So, I appreciate the opportunity to be here, and I am glad to see some old friends. I noticed Frederik Sørensen, who recently has retired from EU, and it is great to see him; and my good friend, Pablo Mendes de Leon, who is one of the great aviation scholars in the world, and for those of you who do not know him, a great guy; you should get to know him. It is a good time to renew old acquaintances, and, I am a little bit sorry to say, share our collective misery.

Charlie, I commend you on the timing of this conference. Just as word was seeping out of Europe that we are in the midst of what some have characterized as a huge transatlantic rift, you get together, and, excuse my French, voila, we have a conference to discuss U.S.-European relations at a time when we really most need it. There have been a lot of high tensions, and we need a conference like this where we can get together and try and find common cause. So that being said, I am grateful to be part of this dialogue. I also am sorry I don't have a Southern accent; Scott Yohe has a Southern accent. It would have fit in perfectly in the home of Delta Air Lines. When I say y'all, I am trying; I'm from California. It is too bad y'all could not be here in the fall to see one of the University of Georgia football games. That
is American football, and it is a great spectacle. You have football, crowds; you have cheerleaders, lots of booze, lots of barbecues. Many would say it is tame by European football standards; but, we Americans, we are an understated people anyway!

One thing you will be glad to know is that I am not going to speak to you today on the state of the industry. We all know the deal, and the news is not good; it is bleak right now. This being a lunchtime speech, I think it is not something we should talk about; it upsets your stomach. So, let me just briefly touch on what is going on now. With the end of military hostilities and the restructuring that is taking place, I hope that it signals better times in the future. I think it is premature right now to speculate on where we are going and what exactly the shakeout is going to mean for the industry; but, I firmly believe that stakeholders here in the U.S., in Europe, and in other parts of the world are taking the necessary steps to return this industry to a vibrant state. We all know we need it.

One of the things that should come as no surprise to you that I do want to talk about is the ECJ (European Court of Justice) decision regarding the open skies agreements with the U.S. I know you have discussed it this morning. I think it is one of the few issues today where we have a chance for some potential good news. I know that it might come as a surprise that someone from America looking at that decision would say that, but, I really do think it is a chance for good news. Let me say from the outset, this is a good decision for air transport. The logic of the decision handed down by the ECJ is sound, and the consequences are intended to allow European unity, to allow the European Union to become a truly single market, or nation, for the purposes of air transport and external negotiations. I know I am repeating myself, but I think that is a good thing. The decision should eventually facilitate consolidation in European air transport; that appears likely, and more importantly, is necessary for survival. I think we are going through the same thing here, and I think it is going to happen worldwide. We all watched with interest in the immediate aftermath of the ECJ decision how pundit after pundit, some of you in this room, spoke publicly on their views.

It may surprise some of you, but I actually agree with some of the comments made by Madam de Palacio. Notably she said, "This is a win/win situation, since from an economic and political point of view, working together at the EU level will also help us to get the best deal for Europe’s airlines and consumers. This ruling is a great opportunity for us to take united
action, to work together through the EU institutions and to promote our common interest worldwide." (As a side note, I like to use unified action instead of untied action.) I don't think anybody can argue with that. I presume that the best deal referred to by Madam de Palacio means that, in the end, open skies, on a truly multilateral level, will prevail. However, in the same breath I just quoted, the Commission called upon its member states "to activate the provisions for denunciation with the United States." I cannot pass up the opportunity to forcefully criticize any, and I underline any, notion of the European Commission asking certain member states to renounce their bilateral agreements with the United States. I say this not as a snub to the Commission but as a plea for common sense and pragmatism to prevail in this dispute. If both sides are to pursue the best deal for their respective constituencies, I think the best starting point is to move forward from the status quo and not to backtrack.

Thank goodness the member states have not heeded Madam de Palacio's request. The request was made in November 2002 and was made on the assumption that the EU would very soon grant a mandate to the Commission to begin negotiations with the U.S. But fully five months later, no such mandate has been granted, and the agreements deemed to violate EU law still remain in place. I know the U.S. government is sensitive to the need to construct a remedy that makes the existing agreements comport with this decision. The charge on both sides of the Atlantic should be for a remedy to be constructed before we enter into what is sure to be a painstaking process of negotiating a U.S.-EU agreement.

Let me take a few minutes to outline the reasons why I think renunciation is not at all prudent as we go forward: What is so good about the existing open skies agreements? First, they create a deregulated marketplace. In the deregulated marketplace, airline managers are allowed to use their assets to follow demand and pursue profitability. Unfortunately, we have not been very good at that in the last few years, but we have the ability and the flexibility to do so. Surely we can agree that allowing managers to pursue demand is much better than having faceless government bureaucrats and arcane capacity formulae dictate who can fly what routes, with what aircraft, and how often.

The same is true of code sharing. Charlie Hunnicutt and I were just talking a few minutes ago about the U.S.-Germany agreement. I do not know how many of you were involved in that or remember that. Before we had the open skies agreement with Germany, we had an agreement that specifically
prescribed exactly how many code shares U.S. and third-country carriers could do into Germany. I think the number was 2000 or 3000. And, people at the U.S. Department of Transportation and other places spent countless hours monitoring if KLM and Northwest were doing their code sharing correctly and how many they were doing to see if they were going over the formula. It is a colossal waste of time.

Today, if you want to jointly market a flight, you are allowed to do so, subject only to consumer protection disclosures. And I say to you, ladies and gentlemen, that is how it should be. I am not alleging that the EU would replace any of the open skies agreements with restrictions. I truly believe we are of the same mind in seeking a deregulated marketplace. I only cite this issue to remind us all of the obvious: a deregulated marketplace is preferable to one managed by the government. The trick really is: How do we agree upon a definition of a deregulated marketplace? I do not have a simple answer to that question. If I did I would not be here; I would be making a lot more money advising the European Union or the U.S. government on how to get there. But, I know the current framework, as I said earlier, is at least a good starting point, and I think we should retain that.

The second reason we should retain the existing structure is because open skies is the foundation for antitrust immunity in the modern alliance movement. Alliances have changed the way we operate. We all operate international services. All of us who operate airlines really have a simple goal and that is to offer our passengers service from anywhere to everywhere. Alliances allow us to at least partially achieve that goal in a way that we could not profitably do on our own. Open skies, coupled with antitrust immunity, has created the ability for carriers to overcome regulatory barriers preventing transnational mergers. Carriers like Delta, Air France, Alitalia, KLM, Northwest, United, Lufthansa, and SAS, all now can coordinate our flights, pricing, and other operational and sales modes and act, for all intents and purposes, like one airline. It helps us to realize efficiencies that would otherwise not exist if we did not have immunity. Over time, this creates a better operation, with more flights and more innovative pricing schemes.

Antitrust immunity is an incredibly valuable tool. On a personal note, one of the reasons I do not want these agreements to go away is my company, and I think I can speak for other companies, considers antitrust immunity an incredibly valuable tool: if you will, the goose that laid the golden egg. We want to protect the ability to do the things that antitrust immunity gives us.
I know that there are those who are concerned about the competitive aspects of antitrust immunity. Antitrust immunity skeptics can rest assured that vigorous competition between immunized alliances has exerted a great deal of discipline over the marketplace. In the competitive environment brought about by the open skies era, carriers have not attempted to abuse the cooperative tools available to them through antitrust immunity. Price competition remains strong and no one carrier or group of carriers has a dominant market position.

Most importantly, antitrust immunity is conditioned on the existence of an open skies agreement. Paul Gretch (U.S. Department of Transportation Director of the Office of International Aviation) and John Byerly (U.S. Department of State Deputy Assistant for Transportation Affairs) recently said in Paris, when they were meeting with the Commission and with the individual member states, that there is no such concept as a comity and reciprocity open-skies regime. Stated simply, if the open skies agreements are renounced, immunity is withdrawn. In today’s harsh operating environment that would not be a good thing. Again, in the aftermath of the ECJ decision, we need pragmatic decisions to move transatlantic cooperation forward, solutions that benefit rather than harm all of the stakeholders involved.

And third, renunciation will create uncertainty at a time when we can least afford it. The Commission correctly stated that renunciation would not take effect for a year. In theory, the U.S. and the EU could negotiate a new agreement in the intervening period. As I mentioned earlier, five months have already passed and the Commission has yet to get its mandate from the Council of Ministers. I and many other observers know they will eventually get that mandate, but it would be irresponsible for U.S. and its bilateral partners to have a period of uncertainty instead of an already proven open skies regime.

So, from my point of view and the view of many of my colleagues, I think on both sides of the Atlantic, we have to find a middle ground, a way to maintain the benefits and flexibility of a good and established regulatory regime. We need a transition period to enable the existing framework to evolve to meet the needs of the broader mandate we all seek, which is an open U.S. and EU marketplace.

Does anyone really think it is a good idea to scrap the existing framework, and I am going to be blunt here, merely in the name of a turf battle or a battle
over jurisdiction? I realize my choice of words might be less than politically correct, especially to those who support Madam de Palacio's view, but I am concerned that heightened emotions over who is in charge and how to proceed could hurt the evolution that I think we all collectively are seeking.

Simply stated, all the governments in this situation should follow the example the doctors follow in the Hippocratic oath. First, let's do no harm to the existing marketplace. Renouncing agreements that have brought and continue to bring benefits to all parties in the marketplace will benefit no one and could harm all stakeholders in the future.

So what do we do in the meantime? That's a $64,000 question. And that is what Charlie Hunnicutt is looking for answers to here. He has suggested for us to come up with some suggestions and ideas of what to do. As I said earlier, if I had the answers, I would not be before you; I would be wearing nicer suits and driving a nicer car. But I am, like you, on a quest to find that answer, and the question we face is, is there a middle ground between Madam de Palacio's renunciation and a new U.S.-EU accord? I think the answer is decidedly yes, and from Delta's point of view, the answer is let's keep the existing agreements in place.

Despite certain views to the contrary, I believe the ECJ decision did not outlaw bilateral relationships. I know this view is shared by many other member states, many of whom are afraid to say so, but I know they share that view. Portions of the bilateral agreements declared to violate European law can be amended. The U.S. already has attempted to do this, over the objections of the EC. I think the EC's objection to this path are self-serving in the short run and not in the best interests of those of us operating in the marketplace and to consumers. If the object is to uphold the rule of law and uphold the ECJ decision, we can do that bilaterally by amending our agreements with member states to comply with the ruling. We should do that and then move forward with the business of a multilateral agreement. In the name of efficiency and certainty, at a time when we most need it, I urge the Commission to reconsider its hardline views that member states are prohibited from negotiating with the United States.

The EU instead has chosen an activist judicial interpretation, claiming immediate powers that I believe, and many others believe, were not cited by the Court. I believe most of the member states do not want this all-or-nothing approach in the short run. I know I am repeating myself and I will say it ten
times if I have to. So my charge to the decision makers here today is, again, let's find a pragmatic way to keep the existing agreements in place. We should retain the certainty and benefits this framework has provided, and once a mandate is granted, we can then address the future. The way to accomplish this is through further negotiation. As I said earlier, I cannot draw a solution here at this luncheon; but the U.S. has begun this process with its partners. For the sake of good government and a stable marketplace, let us continue negotiating and find a way to make it work.

Now let me briefly address what we at Delta feel the future should look like. I think I have said enough about the past, and I think you can understand how we strongly feel about what is in place and how it should stay in place. But what about the future? I have spoken here in the U.S., in Brussels, and in other European capitals, as has Scott Yohe who was supposed to deliver this speech, of how deregulation is the only way to move forward in this business. I believe we are of one mind on that subject, the U.S. and the EU. The proverbial devil is in the details. I think we can all agree that the open skies model must eliminate all restrictions on routes, designations, capacity, pricing, and code sharing, and the current agreements do just that. The situation gets a little more difficult as other more traditionally contentious issues become the subject of debate. Allow me to address a few of those now:

*The nationality clauses that are spoken of in the ECJ decision.* Changes clearly are necessary here for European integration. As I mentioned before, the United States has acknowledged the need for this change, and I believe they have offered a fair and pragmatic solution. However, further discussions with EU have revealed a consequence, that this action means that all EU carriers will enjoy EU-wide rights to third countries. That recently became clear when we went to Paris to meet with individual member states and with the Commission, and we were scratching our heads a little bit. I am sure countries like Japan and China are not going to immediately roll over and allow Lufthansa to fly from London to Tokyo or Beijing. I know the U.S. government will not allow EU countries with restricted bilateral agreements to enjoy additional rights through this clause that currently are not available to U.S. carriers. I am sorry to cite the U.K.; there are other agreements that are not restricted. But the U.K., being the largest market, is of the biggest concern to most of us; and so, by this I mean that U.K. carriers cannot and should not exercise new rights under this clause to fly between Heathrow and Atlanta, a right not currently enjoyed by my company. A solution has yet to be found for this dilemma. It is an essential element of European integration,
but, the EU must be prepared for push-back from affected third countries, including this one.

Limits on foreign ownership and control, the Civil Reserve Air Fleet (CRAF). I know I have lumped a few topics together here, but I believe they are, strangely, interrelated. Delta remains committed to the concept of capital flowing freely. I know Russ Bailey (ALPA representative) and we have had our disagreements, and we continue to believe that as a business, artificial restrictions on ownership and control are a hindrance to conducting business in what is now a modern global economy. That being said, I will acknowledge that there seems little sentiment in Congress to change the current restrictions. Without changes to the law, the U.S. will not be able to bargain away the elimination of these restrictions at the negotiating table, and I realize that makes the dynamic very difficult. So what happens then? Do we just stop negotiating? No. I would like to suggest a concerted effort on both sides of the Atlantic to change our respective laws to allow foreign investment in U.S. carriers and vice versa. In this increasingly dire financial crisis we face, why should we not look at radical changes? Clearly, the status quo is not working too well.

I realize changes like this will affect the CRAF program. I will not belabor the point other than to say that there are solutions that can address U.S. Department of Defense concerns about foreign ownership of U.S. airlines. One possible solution is to insist that foreign carriers seeking to invest in or control U.S. carriers establish U.S. subsidiaries that are subject to U.S. laws and regulations, including the CRAF program. The Brattle Group in a recent study, which I think many of you may have seen, on U.S.-EU relations that was conducted at behest of the EU, does an excellent analysis of this subject and makes a very strong case for amending the CRAF program to allow this kind of arrangement.

As for cabotage, I think if we take care of ownership and control restrictions through a right of establishment clause, the issue of cabotage will become moot. And, Russ, that is about all I can say on cabotage, because I am contractually bound, with the Airline Pilots Association, not to advocate any changes in the law regarding cabotage.

The EU, rightfully, wants to take liberalization to the next level, including addressing these contentious issues that I mentioned. These issues are ripe for debate, and they should be explored further. However, I can tell you as a
twenty-year veteran of politics, the likelihood of our Congress changing these restrictions in the near term remains slim at best. This does not mean they should not be discussed, they should; and I believe Congress should begin to at least look at how some of these changes could benefit the airline industry here in the U.S. and abroad. As a side note, I think it is a shame that Congressman Jim Oberstar could not be here tonight–he is stuck working the same bill that Scott is working on–because Jim Oberstar is probably the most knowledgeable member of Congress. If we have a godfather of aviation, it would be Jim Oberstar, and he is a perfect starting point. Certain managements may disagree with him about how we should move forward with ownership and control, but we have to begin this debate. We have to begin this debate with your constituencies. We have to begin this debate with other constituencies. We keep beating around the bush, talking about how ownership and control needs to be changed. Let's get down into the details. That is the only thing I can offer you going forward. We beat around the bush too much. Let's get down into the details to see if we can find a way to do it in the future.

I referred a moment ago to the study conducted by the Brattle Group for the European Commission on the subject of further liberalization. Many of you are familiar with this study. I urge those of you who are not to review it. Dorothy Robyn, formerly of the White House in the Clinton administration, who handled aviation, and her colleagues have done a very good job of demonstrating that real economic value can be added by further liberalizing air transport between the U.S. and Europe. Its conclusions are an endorsement of a new liberalization, a liberalization that goes beyond the current U.S. model. While I may not agree with everything stated in the study, I do concur with the theory that more economic value will be created through greater liberalization.

Let me conclude by saying that if the current aviation crisis has shown us anything, it is that we need to look at new ideas, to use an overused phrase, we need to think outside the box and even to address topics heretofore deemed taboo or non-negotiable. We will not be able to sign the EU's model agreement immediately. Interested stakeholders and decision makers need more time to become comfortable with some of these suggestions being offered. I firmly believe that over time, that will come.

Our goal—and when I say our goal, I mean that of the U.S. and the Europeans—is one based on shared faith in the marketplace. We need to keep
that faith, keep moving forward in our discussions and avoid contentious blowups if all elements of a new liberalized package are not immediately achieved.

I want to close by thanking Charlie Hunnicutt, Catherine Erkelens, and the rest of you for having me here. I apologize that Scott Yohe could not be here. I hope I have not said anything too offensive, but I think it is something that we feel very strongly about here. I would be glad to take any questions you have.

**Charles Hunnicutt:** I want to thank John profusely for that interesting speech; I think it was very provocative. It should keep us going through the rest of the day.
The Trans-Atlantic Relationship -
Aviation Policy: Clearing the Way to a More Open Market
Friday, April 11, 2003 - Panel II
Panel II - Technical and Operating Restrictions
Moderator: Charles A. Hunnicutt, Robins, Kaplan, Miller & Ciresi L.L.P.,
Washington, D.C., Co-chairperson of the Conference
Speakers:
David M. Jensen, Senior Counsel, Regulatory and Industry Affairs,
Federal Express
Gerard Bekebrede, Civil Aviation Authority of the Netherlands
Louise Maillett, Assistant Administrator for Policy, Planning,
and International Aviation, U.S. Federal Aviation Administration
John Augustin, Senior Legal Officer,
International Civil Aviation Organization

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Charles Hunnicutt: I really am glad you are all here to join us. I do know it is after lunch, but this is an exciting panel and I think everyone will be able to be stimulated enough to have that afternoon lunch dip not be an interference in our appreciation of what is happening.

As we all know there are a multitude of technical issues affecting the aviation community these days. These technical and operating restrictions include dealing with the multifaceted aspects of issues such as aviation emissions and noise. I am certain this panel will have a lot to say on these two issues, but we are not limiting the range of this panel's discussions or your questions. The situation that the airline industry finds itself in today is difficult and worries persist about a market structure implosion. Costs are up, revenue per mile yields are down or flat. Place on top of this the fact that the airline industry must work through the long-term impact of reducing emissions, noise from jet engines, wet-leasing issues, and airport issues such
as night flight restrictions, just to name a few of the technical and operating issues which stir debate. Working out the technical aspects of such issues, which are costly and time-consuming, will be a challenge to the industry.

For example, both sides of the Atlantic have made a firm commitment to reducing the impact of emissions, but what aspects are involved in addressing it? What are the trade-offs between greenhouse gas emissions, noxious emissions, and the efficiency and safety of engines? What about noise issues? What is being done with land-use planning around airports, noise abatement in areas around airports? What are the most important elements of a balanced approach to noise?

With respect to wet leasing, how can the industry address bringing the U.S. more into line with what is already normal practice in many other countries, i.e., allowing U.S. carriers not only to lease out but also to lease in aircraft with crew from foreign airlines? The present regulatory situation distorts competition and produces economic inefficiencies. While most countries follow relatively flexible policies in order to facilitate normal wet-lease operations, U.S. policy continues to be much more restrictive, as foreign airlines can act as lessors only if they themselves hold economic authority for the operation in question.

In light of the current economic situation in the industry, what technical and operating issues should we be trying most to address at this time? What questions would we ask for each of the technical issues raised were we not constrained by the current regulatory system? What would we want to happen?

Allow me to briefly introduce the members of the great panel we have this morning and thank them for their willingness to participate. I will introduce them in the order in which they will make their presentations, and while each deserves a genuine introduction, in the interest of time, I will not do that, but will allow you to look at their biographical data in the conference materials. Our first speaker, just as in the first panel, will be from the carrier, Mr. David M. Jensen, Senior Counsel, Regulatory and Industry Affairs at Federal Express. He is responsible for domestic and international regulatory policy and compliance, which includes issues such as environment, ergonomics, and airports. Second will be Mr. Gerard Bekebrede from the Dutch Ministry of Transport, Civil Aviation Authority, a member of the management team of the
Aviation Policy Department. In this function, he is responsible for environmental issues related to aviation. He is also a member of the International Civil Aviation Organization's (ICAO) Committee on Aviation Environmental Protection and is chairperson of the environmental committee of the European Civil Aviation Conference. Our third speaker will be Ms. Louise Maillett, Senior Counsel to the Administrator of the U.S. Federal Aviation Administration. Her responsibilities include developing national and international aviation systems policies, goals, and priorities. She always hates it when I say this, but Louise is the source of the substantive thinking that informs U.S. policy in this area, and we are delighted to have her today. Finally, to pull the final thoughts together from the international perspective, we are pleased to have Mr. John Augustin, Senior Legal Officer at the International Civil Aviation Organization (ICAO). He has worked with the legal bureau of ICAO since 1989 and has staffed meetings of the ICAO Legal Committee, the Assembly, and various diplomatic conferences. We appreciate having all of them with us today and look forward to your wisdom and insight on the topics up for discussion. So I now turn the floor over to David Jensen of FedEx.

**David M. Jensen:** Thank you, Charlie. I am going to cover a number of items in my presentation, beginning with noise and emissions, environmental issues, approaches to which may actually reflect embedded ideological differences between the United States and the EU, including the relative importance of aviation on the two continents and ultimately perhaps a difference in socioeconomic values between the two peoples. I am going to go on to cover briefly wet leasing and then move on to technical restrictions, which I will view here not as much as regulatory hurdles but more as operational hindrances to efficient operations; air traffic control, focusing on desegregation of the European air space; and air traffic management, focusing on the competition between the tools for twenty-first century communications, navigation, and surveillance capability. So, as location is to real estate, the three most important things for safe and efficient air operations worldwide are global harmonization, global harmonization, and global harmonization.

Because the theme of the conference is movement toward liberalization, I want to touch upon the elements of open skies at the outset and to note that the restrictions that I am going to be discussing, certainly primarily impinge
upon pricing freedom and unrestricted commercial opportunities, but I think that they have the potential to bear upon other elements as well.

Noise, everybody's favorite subject: I think that where we are today is still trying to figure out the efficacy of the phase-out of Chapter 2 aircraft, which occurred throughout the decade of the 1990s and was completed internationally in 2002. Moving back a bit to set the stage: Heading into CAEP 5 (Committee on Aviation Environmental Protection) in January 2001, issues presented were the stringency of a new Chapter 4 noise certification standard and the appropriateness of a further global phase-out of some other subset of aircraft, nominally referred to in some regions as marginally compliant aircraft, within five decibels of the existing Chapter 3 standard. Adding to that mix was the adoption by the European Commission of a non-addition rule, known disaffectionately within FedEx and other entities as the hushkit rule. That measure was adopted in April 1999 and barred the operation of certain re-certificated aircraft in the European Union after April 1, 2002. The CAEP 5 recommendation was for a Chapter 4 certification standard that was ten decibels below the Chapter 3 standard and, based upon cost-benefit analysis, the recommendation was against any further global phase-out of aircraft.

So the issue of regional phase-out moved into the ICAO Assembly meeting in late September and early October 2001, and out of that meeting came the balanced approach to noise management which asked for the analysis of a number of elements, four in particular: reduction at the source, land use planning and management, noise abatement, and operational procedures and operating restrictions, with the goal being balance and addressing local noise problems in a transparent and cost-effective manner. Importantly under the balanced approach, operating restrictions are not to be applied as a first resort. So the idea is to look at all reasonable measures and evaluate the costs and benefits of them prior to making any policy decision. To some degree, I think we have ended up with various interpretations of the balanced approach. In the United States, any operating restriction to be imposed upon a stage 3 aircraft at an airport is subject to the Airport Noise and Capacity Act of 1990. As implemented through the Federal Code of Regulations, part 161, any such restriction requires approval by the FAA (Federal Aviation Administration) and loosely, under a policy of limitation, stage 3 aircraft are protected from such restrictions to the extent that they
cannot pass a fairly rigorous cost-benefit analysis which is demonstrated through six criteria.

Within the European Union, the follow-up to the ICAO Assembly was fairly rapid. A noise directive was adopted on March 28, 2002 and directed the member states to adopt a balanced approach; but in a number of ways it is different even from the principles enunciated in the ICAO Assembly resolution. The EU noise directive explicitly incorporates a policy that action to take noisy aircraft–again, marginally compliant aircraft–out of service will be in necessary, so there essentially is a policy determination within the noise directive that the accomplished phase-out of Chapter 2 aircraft would not be sufficient to ameliorate local noise concerns. The policy facilitates, as opposed to limits, the imposition of operating restrictions or a mandated phase-out of aircraft within a five decibel margin to Chapter 3. The noise directive does, in the spirit of the balanced approach, require consideration of costs and benefits and various measures to ensure that the measures completed or employed are not more restrictive than necessary to achieve the environmental objective for a specific airport; but, in practice, it remains to be seen whether or not the implementation of the balanced approach through the noise directive will become the victim of political expediency within Europe and that very bad precedent worldwide could be established.

I have listed a number of European night flight issues, not all of which are similar. The Switzerland-Germany issue has to do with the use of delegated German air space on approach into Zurich on the national boundary, but I wanted to mention it because I know that it is certainly a very hot topic in European noise circles. In Portugal, there is an existing noise decree enacted prior to the European noise directive which closes airports between midnight and 6 a.m. In Belgium, a decree was enacted just after the effective date of the European noise decree which bans takeoffs and landings of certain re-certificated aircraft between 11 p.m. and 6 a.m. In France at Charles de Gaulle Airport, which happens to be the European hub of Federal Express, there are restrictions being put into place which would limit nighttime operations and also phase out certain aircraft from daytime operations. In Germany, at Frankfurther, there is a proposal to ban nighttime operations, essentially as a trade for support of construction of a new runway. There are nighttime restrictions being proposed in Italy to ban night flights between 11 p.m. and 7 a.m. Spain recently has proposed restrictions; and, in addition to
that, the United Kingdom is certainly considering noise in its consultation for infrastructure needs over the next thirty years. We all will be eager to see the ultimate outcome of the Hatton case in the European Court of Human Rights, involving nighttime noise at Heathrow. The global express industry is wholly dependent upon nighttime operations, and there is no substitute for this service. It is not hard to see that imposing or proposing to impose nighttime operating restrictions in Europe presents severe issues for the express industry. The point here is that in the context of the balanced approach, we understand that noise is a significant social issue; but what we are seeing are restrictions being proposed as a first resort, contrary not only to the ICAO Assembly resolution but also to the EU noise directive, and without the sort of transparent cost-benefit analysis that is part and parcel of the balanced approach process so that all stakeholders can see, if not participate in, the analysis and be heard with respect to it.

Moving on to climate change, I am focusing on CO₂ emissions. The issue here is, what is the appropriate near-term response to climate change concerns as it involves international aviation, and, in that context, what is the role of international aviation in sustainable global development. Article 2.2 of the Kyoto Protocol charges ICAO with responsibility for addressing greenhouse gas emissions from international aviation. It should be noted, of course, that the Kyoto Protocol is not as yet in effect, although it certainly appears likely that it will go into effect. The Bush administration does not support the Kyoto Protocol due primarily to the harsh economic consequences that would be felt from meeting the mandated reductions given its timetable. The ICAO Assembly has recognized three means of reducing greenhouse gas, and I am just going to refer in shorthand to CO₂ emissions from aviation. The first is through improved airframe and engine technology, although those who are involved in this field understand that these improvements take decades and from a technical standpoint there is not any panacea just around the corner. Voluntary measures are another means. In particular, the carriers are excited about the fuel efficiency, the potential of air traffic management through the future communications, navigation, and surveillance (CNS) tools. Finally are economic regulations known as market-based options, which are being studied within Working Group 5 of the ICAO Committee on Aviation Environmental Protection. The idea here is either to increase prices through charges and thereby decrease demand for aviation services or to require credits trading through the establishment of an emissions cap, with the airlines being the
purchasers of surplus credits in a presumed market of surplus emission credits. Both of the economic regulations are market-based options. They essentially are artificial costs that would be imposed on industry, potentially costing hundreds of billions of dollars worldwide to the airlines.

Two different approaches to greenhouse gases: *Climate Vision* is the proposal by the Bush administration which has an economically based metric of carbon intensity, or carbon use as a function of gross domestic product. By the very proposal itself, you see the philosophy that greenhouse gas reduction needs to occur but not at the expense of economic well being. The program would be accomplished at least preliminarily and then reevaluated based upon initial results through voluntary agreements with industry, with a focus on inventorying emissions and certifying voluntary reductions, doing much needed research into future technologies, and continuing to evaluate the international environmental issue.

On the other hand, within the European Union, there is a commitment to the mandated reductions contained in the Kyoto Protocol, which on average in the EU are eight percent from 1990 levels through 2012. As a result, the EU desires a level playing field across all industries and across the world, and therefore there is open support for regulatory schemes such as charges and trading. The policy differences between these two approaches involve the creation of mandates, on one hand, and voluntary measures, on the other. The EU has been very aggressive in its approach—both the Commission and the member states—including the commissioning of independent studies on charges outside of the Committee on Aviation Environmental Protection Working Group 5 process and the implementation of a trial emissions trading program, for example, within the U.K.

Pragmatically, with respect to aviation, issues include just the ability to appropriately quantify the external costs of aviation for the purposes of imposing a charge that would be consistent with the cost of providing aviation facilities or services, and, given the uncertainties in the industry today and the way we differently look ahead compared to how we looked ahead in the past, whether it is possible to appropriately forecast the contribution of aviation emissions to climate change in the future.
I have included wet leasing to open the door for Charlie. The problem here—well, I will call it a problem—is a United States issue for United States carriers. The government prohibits carriers from operating existing international services or expanding international services by the means of leasing aircraft with crews from foreign air carriers. Opportunities in which this type of wet leasing could be used would be flights within a foreign country, flights from one foreign country to another, and flights between the United States and a foreign country. Issues within the United States include safety concerns and labor concerns. I guess the bottom line here is the bilateral dynamic that if it is not going to be allowed by the United States, then it is not going to be allowed by the country with whom we are negotiating, therefore resulting in the loss of that opportunity for United States carriers to wet lease out into another market.

Technical restrictions are much more technologically oriented obviously. Again I am going to speak to these issues more in terms of operational hindrance: whereas in the United States the air space is controlled coast to coast by the FAA, in contrast, in the EU the air space is subject to the segregated control of some fifty-one or more air traffic service providers. In addition, military requirements in the EU penalize core areas in the center of Europe where civil air traffic is particularly dense, so there is a need to resolve issues between civilian and military air use. Will there be a single European sky? Concerns include, again, military issues and also labor issues.

With respect to air traffic management (ATM) and communications, navigation, and surveillance (CNS) tools, these developing avionics technologies should result in safer, more efficient air operations; but, competing priorities and a lack of information sharing have resulted in a lack of coordination such that to some, CNS ATM seems more like cool, new stuff, all it takes is money. Bigger, faster long-range aircraft have shrunk the globe so that a typical flight now may be controlled by several different service providers. The issue is that aircraft need to be carrying payload for efficient operations rather than different types of navigation and communication systems for operations in the United States and in the EU. Competing tools are among the equipage issues. In the United States for communications, we have controller pilot data link communications versus Link 2000 Plus in the EU; navigation systems, global positioning system in the U.S. versus Galileo in the EU; with respect to surveillance, Mode S in the U.S. and enhanced
Mode S in the EU. Without getting into the details of these various CNS tools, which would be well beyond my expertise, the point is that the lack of harmonization will compromise ultimately the efficiencies to be gained by these new technologies.

A laundry list of areas that would benefit from increased air traffic management harmonization includes the licensing of air traffic control (ATC) service providers on a universal rather than on a local basis. This would allow and promote mobility and more efficient staffing of resources in response to shifting traffic volumes. CNS equipment certification standards need to be harmonized to avoid the tremendous expense and delay in the rate of CNS equipage. Regarding CNS implementation procedures, there is today a procedure for navigation performance in the United States. We call it required navigation performance; in the EU it is called precision air navigation. The question is, will they mean the same thing to agencies around the world? There need to be procedures developed for surveillance and communications as well.

Finally, information sharing is needed to operate as a seamless system of all providers and users. Harmonization activities along some of these lines are underway between the U.S. FAA and the European Joint Aviation Authorities. It will be important for these efforts to continue throughout the transition from the Joint Aviation Authorities (JAA) to the new European Aviation Safety Agency, the EASA.

In closing, I would like to thank you for letting me talk about these matters affecting the transatlantic market with respect to concerns that are environmental, competitive, and technological in nature. These are all difficult issues involving significant social, economic, and technical policy decisions; nevertheless, to achieve the goal of full transatlantic liberalization and safe and efficient global operations, we must continue to work towards harmonization.

**Charles Hunnicutt:** Thank you, David. Gerard.

**Gerard Bekebrede:** Thank you Charles, and good afternoon to everybody. My congratulations to the Dean Rusk Center with the twenty-fifth anniversary.
My topic this afternoon is technical and operating restrictions. Some airports have introduced technical and operating measures, for instance to manage the noise climate around their airports. In some cases, but certainly not in all cases, these measures may restrict the access to the airport, and there is a relation with the theme of our conference. It was already explained this morning by Mr. Kiser and by Mr. Jensen this afternoon. An example is, of course, closure of an airport in the night. If that airport is normally used in the night for aviation and at a certain moment you close that airport, then you reduce the access to the airport. That has consequences on the economic operations of airlines. Be careful; it is not so easy. If an airport is designed and designated only for daytime operations and always was used only for daytime operations, then, in my opinion, it is not an operating restriction.

This afternoon I will pay attention to the Schiphol case. Schiphol is the international airport in The Netherlands, in Amsterdam, one of the main hubs in Europe. For Schiphol, it is balancing between economy and environment, and, as a consequence, operating and technical measures, probably restrictions, are introduced. The Dutch government influences the process with respect to Schiphol Airport very much, so there is a sovereignty of our state's government to do something with technical and operating measures and, of course, that limits to a certain degree the international harmonization, which a lot of people are waiting for. At the end of the my presentation, I will illustrate to you what kind of harmonization has been reached at an international and at a European level.

Let's start with Schiphol: In 1990, 235,000 movements, in 2001, 432,000 aircraft movements, an average growth of about six percent per year. So Schiphol did follow the worldwide trend with respect to aviation growth. But, yes, there is an environment around Schiphol Airport, and within a 58 Lden contour in 1995 about 18,000 houses were located. That 58 Lden contour is the area where the yield in noise exposure exceeds the level of 58, and Lden is the metric for noise exposure. In 1999, that number of houses was decreased to 10,000 due to fleet renewal—for instance, the phase out of the older Chapter 2 aircraft. These houses are good houses, middle-class, high-class houses, and people living in these houses have a certain income, have a certain welfare, have the opportunity to organize themselves, address the noise issues of aviation at the government. And, of course, the government is taking them seriously. This year, in February 2003, a new fifth runway was opened.
at Schiphol Airport, but due to the political pressure to reduce or at least stabilize the noise, the decision-making process and realization process took about thirty-five years. But keep in mind, this new runway gives additional possibilities to grow and to follow again the worldwide trend of aviation growth. So for Schiphol, it is balancing between economy, social needs, the transport needs, and environment. But, due to the pressure on the government at this moment, we have a special part in our Aviation Act for Schiphol, and we will have another part for the other airfields. Part of the regulations are, for instance, noise control points. In these points, the noise exposure has to be calculated regularly and compared with the fixed noise bichets for the twenty-four-hour period but also for nighttime separately. There is a cap on the emission of exhaust gases around the airport by aviation, and last but not least, there are technical and operating measures. These measures include standard instrument departure. Probably you cannot fly the shortest route; you have to avoid built-up areas, some of the runways are closed during the night, there are special approach and departure procedures for the night, and there are some older restrictions with respect to the noisiest aircraft in the night at Schiphol Airport. It is questionable whether the word restrictions is correct. They are measures. And keep in mind that these measures were very essential for the discussion on the fifth new runway; these measures enabled the fifth new runway; and the fifth new runway enables further growth of aviation. So they do not restrict the aviation, they enable further growth at Schiphol Airport. It is obvious that the Dutch government did play an important role in the process with Schiphol Airport. Currently there is discussion in the government. There is new research from a credible organization in The Netherlands, which shows us that in a wider area of Schiphol Airport, 4.6 percent of the people are highly annoyed by aviation noise in the night. That counts up to more than 90,000 people in the surroundings of Schiphol, and the Parliament is very concerned. They invited my Secretary of State to come and to give an explanation. She had to promise to come back next year, or the Minister has to come back next year with additional information. If that is not satisfactory, then probably they will ask for new measures. Those new measures will not restrict the existing operation but probably will limit a little bit the further growth of aviation in the night at Schiphol Airport. If there are operating restrictions due to their decision, then I can guarantee Mr. Jensen that it is not the first resort. We do land-use planning, of course, we do operational procedures, and we are working hard in ICAO to get better standards for the aircraft with respect to noise.
In summary, with respect to the Schiphol case, the perception of the environmental impact is dependent on the local circumstances. Take in your mind the high class and good houses around Schiphol Airport, so local government has sovereignty and power to do something with that.

It is also good to note that technical and operating measures are not always restrictions. Sometimes they enable further growth. Then there is something about the international harmonization. It was also explained by David Jensen. International Civil Aviation adopted the balanced approach, and elements of this approach are assessments of the noise problem and then selecting available measures; not every measure is available. Then there is selection of the most appropriate measures looking to the costs and benefits of the measures. It is important that during that ICAO session it was recognized that states have relevant legal obligations, existing agreements, laws--the Schiphol Law for instance--and established policies which may influence their implementation of the balanced approach. That was recognized by 185 United Nations countries during the assembly session in 2001.

Then in Europe, it was already mentioned by Mr. Jensen, there is a new piece of legislation, the so-called directive on noise-related operating restrictions. And, of course, this legislation is consistent with the provisions of ICAO set in 2001. The legislation gives guidelines for the assessment and evaluation of measures to reach an environmental goal. But it is not a prescriptive framework for the decision-making process, which reflects the recognition that states have a certain sovereignty to deal with their local problems.

That concludes my presentation. Thank you for your kind attention and thanks to the organization for inviting me, to give the opportunity to give my lecture. Thank you very much.

**Charles Hunnicutt:** Gerard, thank you very much for that interesting presentation. I think we are beginning to see the complexity of some of the policy issues that are involved in this area, and also I think we are beginning to see how important operating and technical restrictions can be to the value of the liberalization that might occur on the economic side. I would like to turn to Louise Maillett to give us an FAA perspective.
Louise Maillett: Thank you, and thank you all for having me here. I am very lucky to be number three, since all of the heavy lifting has already been done by my two colleagues. I really will try to keep this at a more general level. I have to acknowledge that I am technologically challenged, so I am going to give your eyes a rest; there are no charts or anything like that for my presentation.

Let me talk a little bit about a couple of issues: First, why we at the FAA believe how important it is to have aviation dealt with on a global level. That is why I think this is a very good panel and a very important question, because we really do think that it needs to have a global approach. There are other parts of transportation that go across borders, but aviation and aircraft really operate in a borderless environment. That is unique compared to most of the other parts of transportation. For it to be effective, for it to fulfill its potential, it really needs to have as much consistency as possible, we believe, on a regulatory and operational level. So that is why we have spent a lot of our time over the last many years trying to create that type of level playing field, or consistency, across the world. Another more concrete reason, perhaps, is to look at what aviation does to any industry and to the economy of a country. In the United States, just because that is where I am the most familiar, aviation impact on our gross domestic product (GDP) was estimated at 904 billion dollars. It is 9.2 percent of the total GDP, not an insubstantial amount. It employs millions and millions of people, although in this tough time, perhaps fewer than we would like. But it really is a driver for the economy, so we believe that it is important to support that industry and to support the concept of a global borderless environment for aviation.

With that as kind of as a basis for why we think it is so important to work in aviation internationally, let's look a little bit at the focus of the transatlantic relationship. It is a very longstanding one. Not in the slightest do I wish to denigrate the growing relationship that we have with the European Community and with the European Union, but our relationship goes back a long way with all of the member states in Europe and elsewhere. While I will focus on that, we work very deeply and very heavily with the other regions of the world as well, again under the philosophy that this is a global environment. I will mention a little bit about ICAO as well. So all of those areas are very important for us to make sure that we can have an efficient and safe system for the economy but also for the traveling public. More and more
Americans travel. Part of our job is to try to encourage and try to make a safe travel environment, in the United States certainly, and also safe around the world. That is something that is very, very important to us.

In the European context, we have worked for many years with the member states. We have a deep relationship on a technical level with the member states. There are many bilaterals that we have in the area of air worthiness on how to certify aircraft. The reason why, for example, Airbus products can come to the United States and operate in the United States and Boeing products can operate in Europe is because of the deep relationships that we have with the other countries and the ability that we have to be able to work with them, to jointly acknowledge their capabilities. For example, when Airbus is going to be bought by a U.S. operator and is going to have a U.S. certificate of air worthiness, rather than us go and do all of the different certification requirements—and there are lots of tests, trust me—we work very closely with our French colleagues, our counterparts, and allow their certifications to our standards to be trusted by us. We also retain the responsibility and the ability to ask for additional tests or to go in and actually require them to perform tests for us. But by and large, because of our long years of working in cooperation with the French, we are able to be more efficient in the way in which we certify aircraft that are built, for example like Airbus, in another country, and vice versa. We have worked long and hard in those areas.

We also work on a general policy level with the European Civil Aviation Conference, which is a group of forty-one countries that has been in existence since 1955, trying to formulate common European aviation policy. We have worked closely and effectively with them. A recent example is at the ICAO assembly held every three years where everybody, literally about 180-odd countries, comes together to talk about aviation and to talk about what we should do in aviation, set standards, set policy for international aviation. The last assembly was at the end of September 2001. You all know what happened on September 11; and before September 11, the agenda for the assembly, as you would expect with 180-plus countries coming, was set. Security was either not on the agenda or was about a smidgen of the agenda—very, very small issue. After September 11, the world moved in aviation. The Assembly basically became, as you would expect, a security assembly. That was because of the amount of work that we did with
especially the European Civil Aviation Conference, talking about, What do we have to do now? So in less than three weeks, the world of aviation was able to change the conference focus and also to do some really substantive work in the area of security at this assembly. We could not have done that if we had not had those deep relations with the European Civil Aviation Conference and, at that point, also with the European Commission. To be able to make that happen is what a good relationship between the United States, the European Union/Commission, and the member states can do. It really can set the stage for movement and move the international agenda on aviation; and that to me is the ideal. That is an example of when the relationship has worked and worked well. That was not just in aviation, it was an extraordinary time, an extraordinary coming together of both sides of the Atlantic, and I hope we can continue that in the future.

In addition to that deep bilateral relationship, we are now forming, I would say, a deep relationship with the European Commission. It started off in a very rocky way. You have heard a little bit about that when we were talking about the hushkit. That was an extraordinarily divisive and difficult time in our relationship. That spanned about three or four years, from the time that the European Commission passed the regulation and the time that we then tried to discuss it with the European Commission, tried to get them to see how we saw that as discriminatory and it did not make sense on an environmental basis, and then, failing that, ended up bringing it to ICAO as a dispute. It was a very difficult time. It was not the high point of our relationship, I am happy to say. However, with the great work by Madam de Palacio and Daniel Calleja and other people at the Commission, and many people in the audience and here on the panel, we were able to get through the hushkit controversy, by and large, and it was not easy. There was a lot of discussion, a lot of heat, on both sides of the Atlantic. There were hearings. Whenever there are hearings in Congress, you know that there is something going on. This issue was raised at summits between the leaders of the European Commission and the United States– lots of demarches and all those other types of indications of a very unhappy situation. But the European Community and the European Commission then passed a directive that David talked about, that reflected a compromise approach that was agreed to at ICAO–again emphasizing, I think, our belief that ICAO is such an important player in all of these areas. And that balanced approach that already has been mentioned is what we view as a reasonable and responsible way of moving forward in the area of
environment. We are very pleased that that happened and that the European Commission rescinded its directive. We are less than pleased with some of the actual implementation that has happened since that directive got passed, and we are very concerned and are watching how that happens and trying to keep a good relationship as we go down the road. I am happy to say that the Commission has taken the directive seriously. The action by Belgium basically to ignore the directive has been noted by the Commission and it is taking action and having serious discussions with the Belgians. But there are going to be other challenges or other questions of whether or not that directive has any weight, and that is going to be something that we will watch closely. We do not expect that that directive is going to tie the hands of the countries that have legitimate noise concerns. There are in the United States, just as there are in Europe, airports that have legitimate noise concerns. The question is how do you address them. What the balanced approach does is gives you a process and a procedure and a broad range of options or techniques to address it. Gerard talked about them when he was talking about how they are handling things at Schipol. So at this point it is a real question of implementation. The European Community has stepped up to setting the right standard, an international standard. It is a question now of implementation, and that will be something that we will be watching very, very closely. But, again, it was kind of a watershed in the maturing of our relationship with the European Community and the Commission.

I think that those type of emissions issues will become as important as the noise issues. In the United States what we are trying to do is deal with the aircraft comprehensively and holistically. In the past, because noise was such an important issue, people really did not spend a lot of time on emissions. Emissions has grown in importance and attention in the international world as well as in the United States, and we are trying to look at aircraft holistically. What do they do to the environment? How can we manage that as intelligently as possible to find the reasonable ways of going forward and find ways that are technologically feasible to go forward? That is what we are talking about in the ICAO Committee on Aviation Environmental Protection (CAEP). That form is trying to find the way forward in this area; and they have in the past, so I am hopeful that they will do it in the future.

I do not want just to talk about environment, even though that is one of the usually hot buttons in any discussion we have on a transatlantic dialogue. I
would like to talk about two other areas. One of them was touched on very briefly, and that is called EASO (European Aviation Safety Organization). EASO is a European institution that is just getting created. It basically is going to do the equivalent of the FAA’s activities in certification and in oversight of air carriers. We in the United States certify all aircraft that operate. The U.S. aircraft are issued a certificate of air worthiness. In Europe, what is done right now is that each individual country does that. As a European community they passed a directive and they have created the European Aviation Safety Organization, EASO; that entity is going to be opening its doors in September. It is a very, very interesting time for us at the FAA, because, as I was saying at the beginning, our relationships by and large in these technical areas—and these are very, very technical—are on a bilateral basis. We have many bilaterals with European countries to make sure that we and they are comfortable with how we do business, to make sure that when we accept their certifications that we know that that is a safe product, that we know that that is a product that we can allow to be either put on an aircraft in the United States or used by U.S. or foreign carriers to operate in the United States; and the reverse is true also. I like to call these bilateral trust agreements. It has taken a long time for us to build that level of trust. Now we are going to be faced with building that level of trust with a new agency that will be doing those types of certifications for all of the member states in the European Union. It is a big shift, very exciting for the European Community to have this new agency build up, very exciting for us because we hope that it will really simplify the certification process and allow it to go forward in a much more expeditious way. In the past, there have been problems of what we would see as redundancies, additional hurdles, and additional standards that really were not necessary, vis-a-vis some of the various, different member states of Europe. So we think that this new agency could be a useful and efficient way of certifying aircraft and of continuing the trade and aviation between our two regions. In case anyone thinks that this is just minor stuff, aviation trade between our two regions totaled $40 billion last year, so this is serious. This is serious both from a trade perspective and from a safety perspective as well. So, this is something on which we have been spending a huge amount of time and on which the European Commission also is spending a lot of time, as well as are the member states. How that moves forward is going to be yet another marker in our relationships with the European Community: Making sure that the agency is a technical agency focused on safety, focused on efficiency of certification, is going to be very
important and that it does not stray into what I would call the politics, and there are a lot of politics of trade. That is something that I am happy to be able to stay far away from. We work on what are the safety issues, environmental issues; we do not work on the trade side. This organization needs to be a very focused safety, technical agency. So that is something that we are working hard on and will be for the next couple of years.

The last area is the area of interoperability of equipment. The specific one that I was going to raise is the area of satellite technology. There is GPS (global positioning system) here in the United States, there is MTSAT (multifunctional transport satellite) in Japan, and there is GALILEO in Europe. Those are all satellite technology that enables us to see the future of aviation. But, there are other pieces as well, and what we are striving for is to make sure that whatever system is out there is transparent and interoperable. I absolutely agree with David Jensen when he says it is a sign of failure when we have multiple pieces of equipment on an aircraft. That does not make sense. There should be an ability for us as regulators to set the system and set a system that is able to be as seamless and global as I think this industry deserves to be and is. So, that is another marker in the near years to come of how well we can work together. Sometimes we have to set standards for safety, and I do not consider that to be a hindrance; but, if we unduly hinder the airline industry, then that is a definition of failure in my opinion; and that should be a definition of failure, I think, on both sides of the Atlantic. So those are the types of issues that we see as coming up, and those are the types of challenges we see coming up in the next several years.

The last thing I would like to mention is that while this is a very important relationship, aviation is global. We view the aviation activities at ICAO to be absolutely critical. That is the forum where we are able to, as a world, come together and set standards; and while some people criticize ICAO for being a slow bureaucracy–and we have heard that about the FAA and I am sure other bureaucracies as well–it can move when necessary, and it has been a real leader in setting those standards, and now is moving into a very critical area of auditing those standards as well. So I think that we also have to be mindful of the fact that, in addition to our very important bilateral relationships with the member states and with the European Union, there is a very important multilateral relationship with ICAO. So with that, I will say, thank you and I look forward to your questions.
Charles A. Hunnicutt: Louise, thank you very much. As someone who still bears many of the scars from the hushkit dispute, I am glad to avoid talking about it continuously. I do want to just highlight one thing Louise said. Since we have been colleagues together when I was at the Department of Transportation, the fact that the FAA is a part of the Department of Transportation allows a great deal of collaboration and cooperation. But, it should be very clear to everyone, and I want to make this point particularly for our European participants here, on issues of safety and security, the FAA operates as a totally independent agency from the political direction of the Department of Transportation. I think that is an important thing that people sometimes get confused thinking that because FAA is part of the DOT, that there somehow is political control over those issues. It really is an independent agency on the issues of safety and security. With that I would like to turn to our final presenter from the important ICAO harmonizer, John Augustin.

John Augustin: The ICAO Regulatory Framework – Let me begin with a truism, that it is crucial to ensure that all concerned parties agree on applicable technical and operating rules to avoid a situation where differences in interpretation and application of these rules create friction between them and negatively impact in a practical way the easing of restrictions inherent in any liberalization of an air transport market.

This afternoon I will describe briefly the global regulatory framework which seeks to ensure a common core of harmonized technical rules relating to civil aviation and which provides a forum for the resolution of differences or disputes where one party deviates or allegedly deviates from these rules.

All states on this side of the Atlantic and Europe are party to the Convention on International Civil Aviation, adopted in Chicago in 1944, otherwise known as the Chicago Convention. This convention is the constitution of the International Civil Aviation Organization (ICAO) and is also an agreement to develop international civil aviation in a safe and orderly manner.

The ICAO, which has 188 member states, discharges its functions through an assembly, a council, and other subsidiary bodies, including in particular the Air Navigation Commission, otherwise known as the ANC. These are the
major players in the adoption of technical and operational standards applicable worldwide.

The assembly generally meets every three years and sets policy guidelines; all member states of ICAO may be represented at the assembly. The council is a permanent governing body, made up of thirty-six states elected by the assembly, and has numerous administrative, legislative, and judicial functions. The ANC consists of fifteen individual experts, appointed in their personal capacities by the council.

ICAO has been given legislative or quasi-legislative powers, under Articles 37 and 38 of the Chicago Convention, to adopt Standards and Recommended Practices (SARPs) relating to air navigation, in the form of annexes to the convention.

Under Article 37, each contracting state undertakes to collaborate in securing the highest practicable degree of uniformity in regulations, standards and procedures, and organization in relation to aircraft, personnel, airways, and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation. To this end, Article 37 empowers ICAO to adopt international Standards and Recommended Practices dealing with a range of specified technical matters such as communications systems and air navigation aids, characteristics of airports, rules of the air and air traffic control practices, airworthiness of aircraft, and so on. To date, eighteen annexes have been adopted.

The process leading to the adoption of a SARP is interesting, not the least because of the extensive consultation which takes place between states and between ICAO and states. Proposals for SARPs may come from numerous sources: states themselves, the assembly, the council, the ANC, the ICAO Secretariat, or from other ICAO meetings, technical panels, or committees. The task of developing and formulating SARPs rests with the ANC, which coordinates the activities of panels, study groups, or meetings of states to help in the process.

Following a preliminary review, the ANC submits the proposal to all states and selected international organizations for comments. These comments are analyzed by the secretariat, after which the ANC conducts a final review
and makes an appropriate recommendation to the council for adoption or amendment of a SARP, as appropriate. This is the general procedure followed in the development of SARPs, although in some circumstances there may be some variation in this process. Any annex or amendment of an annex becomes effective within three months after its further submission to contracting states by the council or at the end of such longer period of time as the council may decide, unless in the meantime a majority of states register disapproval. This right of veto by states has never been exercised. In other words, no annex or amendment thereto adopted by the council has ever been rejected by a majority of states. This is in large part due to the consultation process which takes place beforehand.

Are states bound by the provisions of a standard? The answer is a conditional yes. Article 38 of the convention provides that:

Any State which finds it impracticable to comply in all respects with any such international standard or procedure, or to bring its own regulations or practices into full accord with any international standard or procedure after amendment of the latter, or which deems it necessary to adopt regulations or practices differing in any particular respect from those established by an international standard, shall give immediate notification to the International Civil Aviation Organization of the differences between its own practice and that established by the international standard.

The legal obligation of states to comply with standards is not absolute. They are obliged to comply to the highest practicable degree. It is for each state to decide whether or not it can comply. However, if it cannot comply, it must immediately file with the ICAO Council a difference to the standard. Under the Chicago Convention, the state has no discretion in this regard. It must either comply with a standard or file a difference in accordance with Article 38. Although the legal obligation to file differences is, strictly speaking, confined to standards only, as opposed to recommended practices, ICAO also invites states to file differences to the latter when such notification is important for the safety of air navigation.

The effectiveness of the multilateral regime established by the Chicago Convention depends on states fulfilling their obligations in good faith. The reason for this strict and unconditional requirement is obvious. There is a
need for full transparency on the level of implementation of standards. In the interests of safety of air navigation, all states must be made aware of any particular location in which procedures, facilities, or services are available and which ones are not available. If there is no or selective or incomplete compliance and no or selective or incomplete notification, aircraft operators would rely on non-existent procedures, facilities, or services, and flight safety could be seriously endangered.

Another compelling reason for compliance with standards is found in Article 33 of the convention, dealing with the mutual recognition of certificates of airworthiness and personnel licenses.

Article 33 provides that contracting states must "recognize as valid" certificates of airworthiness and licenses issued or validated by the contracting state where the aircraft is registered, provided that the requirements under which such certificates or licenses were issued or rendered valid are equal to or above the minimum standards which may be established from time to time pursuant to the convention. These standards are contained in Annex 1 (Personnel Licensing) and Annex 8 (Airworthiness of Aircraft). Therefore, even if a state has more stringent requirements for the licensing of its pilots or airworthiness certification of aircraft on its registry, it is obliged to recognize other certificates and licenses if these comply with the minimum standards of Annexes 1 or 8.

Incomplete or inadequate information on the implementation of the standards in these annexes could inhibit the mutual recognition by ICAO member states of certificates or airworthiness and crew licenses.

However, for ICAO, it is not enough that states either comply or file differences. The situation which ICAO strives for is for states to implement those Standards and Recommended Practices fully. The two elements complement each other: If too many states simply notify ICAO of their non-implementation of the Safety Standards and Recommended Practices, states could no longer assume a mutual level of minimum international safety-related SARPs. Aviation would not become safer, more orderly, or more efficient.
Lower in the hierarchy of the ICAO regulatory framework are Procedures for Air Navigation Services and Regional Supplementary Procedures, as well as guidance material related to the SARPs which usually are found in specific manuals.

As an added layer to the adoption of technical standards, assembly and council resolutions or decisions may deal with related issues. Should differences arise concerning the interpretation or application of the Chicago Convention or its annexes, or if guidance is required, the matter may be referred to by a state to the assembly or the council for consideration.

One area which has caused concern over the years, in some cases between both developed and developing states and in another case between the United States and the European Union states, relates to the consideration by some states to ban or restrict the operation of certain noisy aircraft at noise-sensitive airports.

ICAO has adopted noise certification standards found in Annex 16. Standards for jet-powered aircraft designed before 1977 were included in Chapter 2 of Annex 16. Later, newer aircraft were required to meet stricter standards in Chapter 3. In June 2001, the council adopted a new Chapter 4 standard.

It is interesting that Annex 16 contains a mutual recognition provision on noise certification.

Operating restrictions on the basis of noise can have significant economic implications for the airlines involved, both those based in the states taking action and those based in other states that fly to and from the affected airports. On each occasion when the matter has been brought before the assembly, it has succeeded in reaching an agreement representing a balance between the interests of all states and taking into account the concerns of the airline industry, airports, and environmental interests.

In the case of Chapter 2 aircraft, the assembly in 1990 adopted a resolution urging states not to restrict aircraft operations without first considering other possibilities. It then set out certain criteria as a basis on which states wishing to restrict operations of Chapter 2 aircraft may do so. In
the case of Chapter 3 aircraft, the assembly in 2001 urged states not to introduce at any airport any operating restrictions on Chapter 3 aircraft before fully assessing available measures to address the noise problem in accordance with a balanced approach, the elements of which were indicated.

Not only the assembly, but also the council has intervened in some cases. If I may move away from noise for the time being, in 1998, the FAA issued a Notice of Proposed Rulemaking to implement a provision in the 1996 Antiterrorism and Effective Death Penalty Act. It was proposed to amend the relevant regulation to state that the security programme of a foreign carrier is acceptable only if the FAA administrator finds that the security programme requires the foreign carrier in its operations to and from airports in the United States to adhere to identical security measures that the administrator requires U.S. carriers serving the same airports to adhere to. The existing regulation required foreign carriers to provide a similar level of security to that of programmes required of U.S. carriers. Many states, including several European states, objected strongly to the proposed amendment. The ICAO Council, on 5 February 1999, adopted a resolution in which it noted the immense difficulties which would be placed on airlines should they be required to comply with the security requirements of both the state of departure and the state of arrival where these differ from the ICAO Annex on security, Annex 17. The council decided that the proposal infringed the basic principles of the Chicago Convention and ran counter to the spirit of multilateralism contained in the convention; it urged all states to ensure that any action which they may take in the realm of international civil aviation should be compatible with the Chicago Convention and with the technical provisions developed and adopted within the framework of ICAO. Finally, the council called on each contracting state to utilize the multilateral mechanism of ICAO where it believes that changes to the content or level of implementation of the SARPs are necessary or desirable. Eventually, the U.S. decided against implementation of the rule.

Although the resolution was adopted with specific reference to the proposed regulation, nevertheless its provisions are more broadly applicable to all aspects of the ICAO's technical rules and the conduct of states.

The possibility also exists for contracting states to invoke a formal settlement of disputes procedure. Article 84 of the Chicago Convention
provides that any disagreement between two or more contracting states relating to the interpretation or application of the convention and its annexes which cannot be settled by negotiation shall, on the application of any state concerned in the disagreement, be decided by the council. In this connection, the council acts in a judicial capacity and has adopted detailed procedural rules.

In March 2000, the United States filed an application for dispute settlement under Article 84 of the convention against fifteen member states of the European Union, seeking a decision of the council regarding European Council Regulation (EC) No. 925/99 on the EU's non-addition, or hushkit rule. In its application, the United States alleges that the EC regulation violates Articles 11, 15, 38, and 82 of the Chicago Convention as well as its Annex 16 in that it limits the registration and operation within the EU of aircraft that are modified in order to comply with the noise standards set out in Chapter 3 of Annex 16.

In July 2000, the fifteen member states of the European Union submitted a Statement of Preliminary Objections, to which the United States responded in September 2000. The council ruled on the preliminary objections in November 2000. It invited the parties to continue their direct negotiations and also invited the president of the council to be available to provide his good offices as conciliator during such negotiations. A number of meetings were subsequently held using the good offices of the president. In December 2000, the European respondents filed their Counter-Memorial. Subsequently, the assembly in 2001 adopted Resolution A33-7, with its balanced approach for aircraft noise mitigation. In March 2001, the European Parliament and Council adopted a new directive which, inter alia, repeals the Hushkit Regulation. Following this and the issuance of a Royal Decree of 14 April 2002 by Belgium, the United States informed the Council of ICAO by letter dated 6 June 2002 that it wished to discontinue the proceedings against fourteen of the fifteen states, not including Belgium. By letter dated 24 July 2002, the agent for the fourteen European states informed ICAO that, in the view of the respondents, the complaint should be withdrawn from all fifteen states, not just fourteen, and that the respondents could not accept the maintenance of the case against one European state alone. Consequently, the case continues against all fifteen states.
The multilateral framework for the development and adoption of technical and operating regulations, which I have described, has served civil aviation well. ICAO also makes available to the international community a variety of avenues to help resolve any differences between states which may arise in relation to these agreed technical rules.

Thank you, Mr. Hunnicutt.

Charles A. Hunnicutt: John, I have to say I enjoyed your calm, analytical presentation of episodes in which I was involved where I imagined blood on the streets and dead bodies lying around. It sounds very clean when you describe it the way you have described it. What I would like to do now is first ask the panelists themselves if they would have any comments on each other's presentations. I did note that there were some discrepancies between them and they may or may not want to comment. I will start with David again and note that I noticed that Louise did not discuss wet leasing, so I will leave that open for her to come back to as well. But, David if you have any comments.

David M. Jensen: I really do not have any comments other than to observe Gerard's distinction drawn between measures and restrictions and to just express a word of caution along those lines. I am not sure that in my dictionary I would make that distinction.

Gerard Bekebrede: David, I can imagine your reaction in looking to the ICAO resolution and the balanced approach. We came to conclusions, but, looking to those conclusions in the implementation, there still are some questions of implementation, and one of those questions is measures and/or restrictions. That brings me to a question, probably for David or for Louise: If an airport is not used up to its physical limitations due to measures, but the existing operations can be handled, but there are measures that you cannot, in the future, fully use your airport, is that the choice of the state or the airport authority, or is that an operating restriction? So that is my question to David or to Louise or both.

Louise Maillett: I guess it depends on what kind of a restriction you are talking about. For example, there are safety restrictions that an airport could be used more aggressively except for a safety regulator saying, No, that's not safe, so therefore we are not going to allow that type of operation. Now the
balanced approach talks about very specific access restrictions based on environmental issues, so I am not sure, Gerard, exactly what kind of restriction you are putting out on the table. You are too subtle for me today.

Gerard Bekebrede: Let's take an example: We expand an airport in The Netherlands. The typical airport would be for fifteen runways, which gives additional possibility to growth, but we also take a measure that in the night that runway cannot be used to its physical limitations due to the noise climate. So we install a new runway, there is growth of aviation, excellent; but at the same time we say, No, you cannot use that runway up to its maximum capacity in the night. Then in my opinion it is not the restriction. We built a new runway for growth of aviation. Can you can discuss that?

Louise Maillett: Certainly you can discuss it. The balanced approach does not stop any country or any local airport from imposing restrictions. What the balanced approach does is say that if you are going to address that issue, you need to look at it in a certain way, following a certain process. And I think that the clarity that needs to be brought to any discussion about what the ICAO resolution did or what the European directive did, is that it allows local decisions. Noise is a very local issue. It is true in the United States; it is true in Europe. What the balanced approach does is say that if you are going to deal with this issue, you need to do it in a way that makes sure that you find the most economically efficient way of dealing with it. Make sure that you define the problem. In places in the United States, and I would say elsewhere as well, sometimes the problem is more political than reality based. There really are not that many people around the airport who are impacted significantly by noise, but there is a very vocal part of the community and that sometimes overwhelms the data. So we say, you need to look and say: Where is your problem? Which part of the airport is the problem? What are the types of solutions you have available to you? And we need to look at all of the solutions. I mean to look at land use.

We in the United States recently have reauthorization, which is a request for more authority. We have two to three provisions in our request for more authority in the area of land use, because we think we need to get more of those tools out there so that we can encourage responsible land use. So, you have to look at all of those things, and then, at the end of that process, if that process comes to the conclusion that a restriction is the way to go, that is
acceptable. That is something that we have always said; this is something that we have agreed to up at ICAO with the resolution.

So it is not an either/or; it is a commitment to a transparent process where people are allowed to comment, and it is not done over night. It is not done as a pronouncement as it has been done in some of the countries where it is just like, This is what we are going to do, and, oh, by the way, we will do the analysis after we make our decisions. No. The balanced approach is that you say, We are concerned about noise. But first we look at what the noise problem is, we see where it is, we see what kind of measures will address that specific noise problem and what is their economic impact, and then we take what I would call a good government approach. You take the measures that give you what we would call the biggest bang for your buck, give you the most environmental benefit for the most reasonable cost. That is what the balanced approach does; that is what we are trying to do here in the United States. It is not easy either, because it is a very emotional and difficult situation. People who are annoyed by noise are honestly annoyed by noise and feel very, very strongly about it here in the United States, just like they do in Europe. So, it is not an easy situation; it is not an easy process. But, we think by following it, you come up with a fair-and-good-government type of approach.

I don't want to hog this, but let me just say, I consciously choose not to talk about wet lease; so there Charlie. It is a very difficult situation, and I do not know where it is going to end. Our concern, as always, lies in the area of safety, to make sure that we are able to be clear exactly who has operational control of the aircraft and, consequently, somebody that we are able to then regulate and make sure that management is to our standards. It is not an easy issue, and I do not know where we are going to go on that, but that is the crux of what we are struggling with on wet leasing.

Charles Hunnicutt: Thank you. I would just add to Louise's discussion of the balanced approach that, for our European colleagues, in the United States, we also want to build more runways; we want to build airports. So for us to solve the noise politics in local communities, it is just as important for us to continue to develop our capacity on this side of the Atlantic. I think at this point I would like to open it up to the participation of the rest of the assembly here. Frederik.
Frederik Sørensen: Once again, my name is Frederik Sørensen. David was talking about harmonization to a large extent in the collision avoidance system/ATM area, mostly of a technical kind, but I think that there is also need for procedural harmonization. You may set it up in one way, and in one region in the world it works fine, in another region it works fine, but when you mix operations it creates problems. What I have in mind is the situation where you have a collision avoidance system which gives one message and then the air traffic controller who gives a conflicting message, which is a case of mixing together two procedural approaches. My question can be one to David or to John, because really it is something that needs to be resolved at worldwide level, and it is necessary to see that an international approach is found in a situation which tragically occurs as well as in other areas.

David M. Jensen: Yeah, I absolutely agree and had noted that in two issues: One, although there are implementation procedures now established for navigation, there may be distinctions between the United States and the European Union that cause them to not be interpreted similarly around the world. Also, for surveillance in particular, separation distances probably will lag behind until adequate procedures have been established.

Frederik Sørensen: Let me add that one of the areas we have been focusing on in ICAO for quite some time is actually the legal framework to govern the use of those signals from space. There are differences in view between different groups of states, including between the European states and the American states, and progress has been a little bit slow in agreement of framework. The last I heard was that they were trying to come up with a contractual arrangement, which eventually would lead to a convention, but there is not much consensus around that yet. As for technical operating matters, I am not sure whether our Air Navigation Bureau is doing anything on that right now. Certainly if it is raised, it would be a matter to be examined.

Tim Schindler: I have a question about the new European agency. Does that include the expanded EU within that agency already? And, the second part of the question is: Will the FAA's dealing with this agency have to kind of coincide with any kind of open aviation area that we have talked about this morning to make sure that those two items are moving at the same pace?
Louise Maillett: Good questions. The agency, when the EU is expanded, is an agency of the EU. Therefore, right now it has only a certain number but would be larger as they expand, and that raises issues for us. As I said, we had a long relationship with these countries that we have these bilaterals with, and before going into any sort of an agreement where we would basically say to the new agency, "Yes, we are comfortable relying on your certification," we are going to have to go through what we call a validation process. We are discussing now with the European Community what that means so that we will be able to feel comfortable. If they expand and if they change their procedures, we may have to go through multiple levels of validation; but, we will not accept their certifications until such time as we are comfortable that they are capable and their procedures are capable to do that. It will take some time before that happens. So that is something that is very, very important.

There is a bigger issue than the new people coming into the European Community. There is the group that was there before this agency, called the JAA, the Joint Aviation Authority, which was much larger than just the European Community. So, there are many other countries out there that may not be large enough or sophisticated enough to build aircraft, but they build aircraft parts and they want to be able to be part of this dialogue in this relationship. So we have a couple of different kinds of complexity vis-a-vis going forward with this new agency.

It is clear that there is going to be a lot on the plate between ourselves and the European Community; but what Charlie says is really true: We work on a technical level, and we view this as a technical issue. We would like to keep this technical. Just like you heard about hushkit, sometimes things do not stay at the nice technical, clean level. Sometimes they get a lot more complicated, and they get a lot more passionate and political. So, I cannot predict where that will go; but I do know that what we do and what we look at it is from the standpoint of how do we make sure that this agency has the technical capability to be able to do what it says it wants to do, that we can accept it, and visa versa. Now the U.S. Department of State also gives us the authority to discuss these things. So the State Department will bring in, as will the Department of Transportation, what I will call a political overlay; but, what we do are the technical discussions with that agency.
Charlie Hunnicutt: Louise, could I just add that it has been U.S. policy and European government policy that, regardless of the economic rights that exist, if a partner country does not have the capacity to enforce their safety and security standards, those economic rights can be suspended until such time as they can provide the types of oversight that meet ICAO standards for safety and security. So, to a certain extent they do have to be coextensive, because, if the partner countries cannot meet their ICAO standards, then, regardless of what rights exist in the treaty, there is a safety override. Thank you.

Pablo Mendes de Leon: Thank you. My name is Pablo Mendes de Leon. I heard Madam Maillett this afternoon referring to a balanced approach toward imposition of operational restrictions at airports, that a balanced approach should be adopted toward that process. My question: I try to link the discussion of this afternoon to the overall theme of this conference, which is the achievement of open markets. Suppose a community in the United States, say because of people who cannot sleep, imposes very heavy operational restrictions at an airport, and there are open markets which the U.S. government tries to implement following deregulation or in the context of open skies agreement, and then an airline, let's say Singapore Airlines, has problems with landings at that airport because of the very heavy operational restrictions. Would Singapore then address a request to the U.S. government and say, Well, I thought that I had free trade with your country and now this free trade is frustrated by the local restrictions. I heard you say we need a balanced approach, then. I thought the balanced approach would refer to the operational restrictions, on one hand, and would be balanced between the operations and the noise concerns and the free trade concerns, on the other hand. But, apparently I was wrong. I would like to ask how such a situation would be resolved.

Louise Maillett: Well, let me address the balanced approach and then ask Charlie Hunnicutt to talk a little bit about the resolution piece. In the balanced approach, there are economic considerations taken into effect, the economic impact of imposing that restriction. That is a broader economic impact than just to one operator, obviously. It is to all of the operations into that airport, domestic as well as international. So there is an economic piece of the balanced approach, but it is broader economic, because it is also the economic impact to the region as well. So it does not narrowly address just the bilateral
relationship or the bilateral rights under agreement between, let's say, Singapore and the United States, or whatever country.

**Charles Hunnicutt:** Our bilateral safety agreements are separate from our bilateral air services agreements, and so the balanced approach that Louise has just described is different from Cathay Pacific's rights to reasonable opportunities to conduct business in the United States under our Bilateral Aviation Services Agreement. If they felt that they were being unfairly discriminated against, there would be a claim under the Bilateral Aviation Services Agreement as to their economic rights. But I think it is important to tie this to the overall theme, because giving rights, hard route rights that cannot be exercised, limits the value of moving toward liberalization. And, it is not just these restrictions, but requiring the placing of whole CNS/ATM systems, sometimes multiple systems, on the same flight, increasing their costs substantially. So, it is the practical impact on liberalization that it is so important for us who think about these technical and operating restrictions to make sure that we get the most benefit out of the liberalizations that we are able to achieve on the economic side. I think that would be the point I would make.

I think maybe we have time for one more question if there is one. Yes.

**John Kiser:** I am John Kiser. I think we sort of established that technical is viewed as rather clean and political is sort of dirty, but I am going to ask the political question anyway. Mr. Bekebrede described the fact that national governments in the environmental area, and certainly we know in safety and security areas, have responsibilities and powers, and sometimes these run up against international obligations; and Mr. Augustin described a situation in the U.S. where the shoe was on our foot with what I think was the Hatch Act on identical security measures. My recollection of how things have been dealt with in the United States Congress is that when the point about international obligations is made, to be careful with this legislation, some international difficulties may be caused; sometimes, instead of being mindful of that and trimming their sails, it has the opposite effect, and the reaction is, Well, to forget the Europeans, we are going to do what we are going to do anyway. And, of course, in Europe you also have EU obligations. So the general question is, when national governments in Europe are considering environmental legislation, for example, and the international complications
are pointed out, does it moderate their conclusions, or is the reaction, forget Brussels, or forget the Americans?

**Frederik Sørensen:** Good question. Thank you for that. Of course we have to follow the international obligations, and, of course we have to follow the European legislation; and we do that. The point I was addressing is that, if we are looking to balanced approach in relation to noise management, sometimes it is not fully clear or you can have different interpretation on what an operating restriction is. In the ICAO Assembly, let's say we were discussing that it is recognized that states have the legal obligations, loss, their risk polices, etc. since at least my country at that moment was aware that there is some wish of the government to regulate their local problems in their own government.

**Charles Hunnicutt:** Thank you. Sometimes I see the other side, the political side of your question more like me and my brothers growing up: The European Parliament, the U.S. Congress, and the national parliaments in Europe are sort of like siblings that like to poke each other, and I think they get some pleasure out of doing that. That is not always the most efficient way for us to come to resolution of problems. With that, I'd like to thank the panel for a tremendous contribution today.
The Trans-Atlantic Relationship - Aviation Policy: Clearing the Way to a More Open Market

Friday, April 11, 2003 - Panel III

Panel III - A New Foundation for Business Strategies and Public Policy

Moderator: Paul Dempsey, Tomlinson Professor of Global Governance in Air and Space Law, McGill University, Canada

Speakers:

Robert Donald, Secretary to the Legal Advisory Council, International Air Transport Association (IATA)

Paul C. Jasinski, General Counsel, Americas, British Airways

Gerald Gordon, President and CEO, Fairfax County (Virginia) Economic Development Authority

Frederik Sørensen, Aviation Counsellor, Brussels/Denmark, Former Head, Air Transport Division, E.C. Commission

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Paul Dempsey: My name is Paul Dempsey. I am a professor of law and director of the Institute of Air and Space Law at McGill University in Montreal. I also am a vice chairman of one of these nefarious LCCs (low cost carriers), Frontier Airlines, which operates thirty-seven Airbus 319s and Boeing 737 aircraft coast to coast out of Denver. We are soon to be the launch customer for the Airbus 318 and are growing while the rest of the industry is shrinking, part of the problem that we will talk about in this panel.

I was a student at this law school more than twenty-five years ago. Charlie Hunnicutt and I both graduated from this institution, and I took constitutional law from those two gentlemen whose portraits are on the wall, Dean Ralph Beaird and Dean Ron Ellington. They were brilliant, brilliant, brilliant educators in the classroom, and they were very good deans of this law school, raising a tremendous amount of money for this law school. I was a student also of Dean Rusk in public international law and Gabriel Wilner in
private international law. These are the people who developed in me a thirst for education, and I left here wanting to go on and continue my education and I did at a couple of universities. Then, when I finished that, I thought, Well I like this too much; I don't want to leave the classroom. I moved to this side of the podium as a professor and have been there ever since. Education is a fabulous place to roll around in if your are intellectually curious.

I am going to introduce each of our speakers and they are going to speak for about fifteen minutes each. If there is any time left over at the end, I will read my paper all the way through from front to back. (laughter) That is in your materials. No, actually, I have a PowerPoint presentation that will address some of the issues that have been touched on, but some of them I think might be touched on a little more deeply.

I want to introduce our first speaker. We are going to through in the order in which they are listed in your program. The first speaker is my good friend, Rob Donald, who was in private practice for ten years before he came to the International Air Transport Association (IATA). He had the opportunity in 1994 to go to work for them in Geneva. Fortunately, they brought the legal team back to Montreal; he has been director of the Montreal office since 1995 and General Counsel of the International Air Transport Association since 2001. Montreal is a fabulous place to deal with international aviation, because there is so much expertise there: Not only is IATA there, but also ICAO is there, and, of course, McGill University is there. He holds his B.A. from Concordia University, a B.C.L. from McGill University, a diploma from Kings' College in London in European Community competition law. I will turn it over now to Rob Donald.

Robert Donald: Thank you very much, Paul. It is a pleasure to be here. It is great to be back in a university setting. Those of us who were indulging our sins outside were wondering why we ever left university. (laughter) And, I think you and Pablo have it right. You have the job and the climate. We have to figure out a way to get back here. I noticed no one else gave a disclaimer, but I will. Anything I say up here are strictly my own views. They are not the views of IATA or any of our members, unless you agree with them, in which case they will jump in.
The title of this panel is *New Foundation for Business Strategies and Public Policy*. Others will talk about the business. What I am interested in are the public policy issues going forward, particularly in North America and the European Union. We all know about deregulation in North America and the EU third package in 1992, and coming out of those, we have the mantra of competition and privatization. Those were the buzzwords. That is where everybody was headed, and many or most developed states have been following that. The U.S. has always been private, of course, but certainly the Europeans have been on a wave of privatization. Today approximately fifty percent of IATA's members are privately owned and fifty percent are state owned. Our members, by definition, are international carriers, so I am really focusing on the issues of concern to them today and not the low-cost model.

We all know the airlines are undergoing the worst crisis in their history. You are all familiar with the numbers and the unprecedented losses that the industry has been through, and we are all familiar with some of the contributing factors: the economic downturn, September 11, war in Iraq, and now SARS (sudden acute respiratory syndrome). Who would have figured that SARS would have more of an impact on the industry than the whole war in Iraq? It is stunning, but it is true.

Of course those aren't the only problems in the industry. There is the whole discussion about low cost and is the network model broken. I am going to leave that to others to discuss. My concern today, as I say, is the policies, practices, attitudes of government that are not only causing extensive damage to the airlines, but which, in my opinion, conflict with the whole philosophy of privatization and the development of a good, healthy industry that is able to meet the economic needs that every government espouses and to fulfill its role. If September 11 taught us anything, it is the role that aviation plays in world economies. Business, cargo, leisure, all came to a crashing halt after that, and we all saw the impact of it. Fred Smith was giving a lecture at IATA recently, and he said that something like sixty percent or eighty percent of the world's freight by value travels by air—a stunning statistic—and of course it all came to a crashing halt.

Many of the people in this room were at an ICAO air transport conference two weeks ago, and speaker after speaker got up and said, Yes, we need an efficient air transport system, it is vital to our economy. Many of them said
that is the reason they needed a national airline; but, everybody agrees that efficient, effective air transport is crucial. So we all agree on that, and yet the same governments which advocate the need for a strong aviation industry are adopting a whole series of measures to address competing government objectives. I think that those are all perfectly legitimate objectives, but my thesis is that it is just not clear to me why shareholders should be paying for these. I think they are counterproductive and government should be assuming a much greater share of the cost of these social objectives. They are perfectly legitimate but only if the government owns the airline and is funding the cost of these. These competing government policies and objectives result in a patchwork quilt. Every government has its own priorities, of course, so they are all adopting different ones. These impact the efficiency of the global system; it ensures carriers will never make a reasonable rate of return; and it discourages shareholder investment and privatization. It is discriminatory.

No other industry that I am aware of is subject to this kind of industry-focused, specific legislation, and I will go on to discuss those.

Everyone in the aviation industry, every supplier to the aviation industry, has a healthy rate of return, except the airlines themselves. Why is that? Well, an awful lot of it is attributable to government policies directed at the airlines, and the other crucial thing is that it is an industry where governments allocate virtually all of the costs of aviation to the users. I am not aware of any other industry where all of the costs of the industry are allocated to the consumers and the companies. Trains, taxis, freight, maritime all get the benefit of the infrastructure that is there; but somehow in aviation, we and our consumers are obliged to assume all of those costs, and that philosophy ignores the benefits to the whole economy that everybody preaches. There is a non-exhaustive list of the types of policies that I am referring to.

_Taxes, fees, and charges:_ Virtually every government treats aviation as a cash cow. We all have heard stories about people who buy tickets and the actual fare is less than half of the total they end up paying. The taxes, fees, and charges exceed the price of the ticket; and that is truly extraordinary. The government is sorry; it's the way it is going to be. When Ansett Airlines went under a couple of years ago, about eighteen months ago, the Australian government introduced a ticket tax of fifteen bucks a ticket to fund the pension plan of all the Ansett employees; their pension funds had disappeared. And we told them that this is contrary to the Chicago Convention and contrary
to ICAO principles. They said, Yeah, okay. The tax did not disappear. It is still there; it goes into general revenue, and then they are funding the pension from there. It is truly extraordinary, but they said they were overriding public policy. "We need the money; this is where it is going to come from."

Privatization of airports and air traffic control (ATC) providers: Airports and ATC providers are virtually all monopolies, even when they are privatized. They are all on this full-cost recovery program, so, when traffic falls, they simply increase their rates. Wouldn't it be wonderful if airlines could do the same thing? We would just love that. When traffic is down, we would like that, and yet we cannot. An example from Canada is NavCan, which introduced a temporary freeze after September 11; but in 2002, the average increase was six percent. And they are one of the better ones. Some of the stories we are hearing of increases in Europe are truly astonishing. The governments say, Sorry, full cost recovery, the user pays. So where does this money come from? It is just not there today. In Canada, when we privatized our airports the government said, Right, we are going to divest, but ... And, they are going to charge rent now going forward, on average approximately 250 million dollars a year of rent on the space, and this is to what? To recoup their past investment. Again, extraordinary. The governments feel that they should download these costs, not just going forward but prior costs, on the consumers and the passengers. It results in huge costs to carriers, and, again, there is no regulation of this. The airlines have no voice whatsoever. There is no regulator in Canada for these costs that the airports charge. We introduced last year twenty-four dollar air traveler security costs on domestic round trip or international: twenty-four bucks. It is a huge increase in the price of a ticket. Ask Air Canada if it can increase its fares by twenty-four bucks on certain flights, and they cannot do it. Yet, the government does it with impunity. Other examples of conflicting policies, and again I will pick on Canada because there are no other Canadians in the room. At the time of Canadian Pacific's demise, our minister of transport, David Collenette said, "Right. Public consideration: We cannot have a monopoly out here, we need to introduce policies to address that." So his first publicly stated plan was that he was going to negotiate cabotage with the United States, reciprocal cabotage. So one of his minders told him, Well, that's not going to happen. So he said, "Oh, okay. Well, if we don't get competition, we are going to open our borders and allow unilateral cabotage in Canada." Happily that has not happened yet for Air Canada. It has not helped them enormously. But again,
we have extraordinary public policy considerations without any consideration of shareholder value. They introduced extraordinary special legislation at the time because they were so worried about a monopoly carrier, and they put in restrictions on maintaining thin routes. Air Canada had to do this and apply for permission to drop them. They gave immunity to the travel agents in Canada to negotiate collectively with Air Canada, and a whole series of special provisions specifically targeted at this corporation. On the very same day, Air Canada was found guilty by the Competition Bureau of predatory pricing on one route and charging too high a fare on the other route. And I will tell you, if I was a shareholder of Air Canada at that point, I would have turned to the government and said, "Look, I tell you what I am going to do. I am going to give you back your shares. Just give me what I paid for them six years ago, and I am going to throw in Canada as a package deal." Overriding public concerns, no consideration for the owners of this corporation, and yet the same minister two weeks ago when Air Canada was going under—we are right in the middle of an air transport conference discussing liberalization—and Air Canada is threatened. It is in all the newspapers, and Mr. Collenette publicly stated, "We will do whatever is necessary to protect our national flag carrier." There you have it.

**War risk insurance:** You are all familiar with the story post-September 11: cancellations, slow return in the market, huge increase in premiums. Many, many governments said, Nope. They reluctantly provided short-term guarantees; but the general view, especially in Europe, was that no, they do not want to distort the market by intervening and providing coverage. And there is still extraordinary reluctance by many governments today; and bluntly, many governments just could not afford it, as we heard two weeks ago. One EU carrier has told me that its insurance bill went from seventeen million to 140 million dollars in one year for factors completely beyond its control. It is trite in our industry, or at least among the carriers, to say that terrorists attack states not airlines and ask why the carriers should assume all of those costs. Carol Hallett says it better than anybody I have ever heard in her closing speech to the Aero Club of Washington in November. All of these are quotes from her speech: "I previously stated this publicly, but in the interest of clarity, let me reiterate: We need to change the way governments finance aviation security. The idea that travelers and shippers should pay users' fees to have themselves protected from terrorism is outrageous. We don't charge a security fee to protect our citizens from terrorists when they
ride a subway, and we are not charged a protection fee when we visit a museum. People visiting government facilities don't pay a security fee for protection from terrorists. The attack on the United States on September 11 was just that, an attack on the states." Talking about the overall costs of this, she says, "Just look at the estimated industry pre-tax losses for 2002. They are estimated at a total of nine billion, and it appears that 6.3 billion of that nine billion loss, one way or another, arises from September 11, so these are costs attributed to the industry as a result of increased security, increased insurance costs, all of which, as I say, the shareholders and the corporations are being obliged to pick up. Truly it is extraordinary." She concludes, "If we are to avoid devastation from the continuing meltdown of the airlines, corrective and decisive action must be undertaken." She addresses the elimination of costs and getting our own house in order. But secondly and just as importantly, the United States government must assume the full cost and responsibility for assuring protection of the aviation system against terrorists' attacks, and my point is that governments have to step up to the plate, not just on more risk insurance, not just on security costs, but any time that they decide there is an overriding public policy that they want to implement, they should be assuming the costs of this. She concludes, "Failure to fix the root cause of the airline industry's meltdown may necessitate nationalization of the industry." I think part of that was for shock value, but frankly, it is a thought that is gaining momentum as we see the meltdown continue.

Airport improvement fees, airport parking fees, for goodness sakes, all of these costs that governments are passing on: There is no way that your airport parking fee is in any way related to the cost of providing that service. It is like buying popcorn or beer at the ballpark. I mean, it is just an additional source of revenue for them. Time and again I hear it. At the time of war-risk insurance when we were debating this in ICAO, the suggestion was, What's the problem, just put another three bucks on the ticket, where is the problem?

Consumerism: One of my favorites is the European Commission consultation paper on airline contracts with passengers. It is interesting that it is a joint consultation paper, issued not only by Directorates-General Energy and Transport but also by Health and Consumer Protection. So both of these groups are looking at consumer-specific legislation for the aviation industry. It is the first step toward legislation, and, with respect, we do not know yet how bad it will be, but we are not optimistic. There is a whole series of
questions which, again, if anyone in any other industry were asked about these things, they would just be horrified. We in aviation go, Hit me again; hit me again. Some of the things they want to look at with the series of questions they are asking for comments on, they have gone out to consumer organizations, the airlines, and trade associations, and asked, What should be the content of the contract? Should it be in plain language with ambiguous language being interpreted in the fashion most favorable to passengers? Should you get written confirmation before the flight? Should the Community create other rights not mentioned in this paper? Should Community legislation create rights for the purchaser of a tip kit when different from the passenger? Should legislation give passengers a right to a refund or an alternate flight acceptable to them every time a carrier changes its schedule after issue of the ticket? Well, what's the consumer going to say, Yeah, give me more? Other examples: Should Community legislation prevent limitations of liability when damages are caused by delay? Well, who is going to say no to that, other than the airlines? Should Community legislation prevent carriers from passing on increases in taxes or charges after conclusion of the contract? So they can put up the taxes, but if you have already issued the ticket, tough luck; the airline has to assume that difference. And again, they will tell me they have not legislated this yet. Ha, ha, ha. We can see it coming, and at the end of it, they will go, Oh, well, we listened to you on twelve of these, be thankful we didn't impose them all on you. What other industry is subject to a consumer referendum on their terms? Banks, insurance companies? Do we love them? What would happen if we had a referendum on their terms and conditions? Would anybody vote in favor of them? Of course not. And yet, even though we have laws of general application in the Community and elsewhere, we feel that those are insufficient; we have to have targeted, focused consumer legislation directed solely at airlines. And again, airlines and/or their customers, theoretically, are going to assume these costs. But that assumes that either airlines will pay it out of nonexistent profits or it makes false assumptions about the elasticity of demand. Frankly, it is just not there. If airlines could increase their fares, they would, but they cannot.

Denied boarding compensation: Another great one, and we see this all over: extraordinary levels of payments being proposed. I have lost count of the number of revisions. I am sure someone in the room can tell me to date. At one time, it was five times the current level. We had a seminar in
Singapore recently. Tim Bye, general counsel of British Midland, was talking on this, saying that the price of some of their fares is thirty-nine pounds; that is the price of a pair of jeans. He says, if you take the jeans back because they are defective or you don't like them, do you get an Armani suit? No, you get your thirty-nine pounds back. And yet, the Commission is proposing legislation with no cap on it. Regardless of whether you paid thirty-nine pounds for your ticket, you are going to get whacked for some three, four, five times that amount. What is the limit? Somebody will tell us later in the discussion, but the situation is extraordinary.

Ticket notices: (One of my favorites, I couldn't resist.) The U.S. still mandates a ticket notice from Montreal 1966 that talks about 75,000 dollars limit of liability. It is law; we have to put it in there. It is completely misleading. We had a meeting with Don Horn a couple of years ago, and Don could not even read it. I said, Read this; see if you understand it. It is gobbleygook, but we still have to put it there.

And the EU, in 1997, felt they needed to anticipate Montreal 1999, and they put in a regulation requiring, again, extraordinary notice provisions. Now, despite Montreal 1999, they have come out with 889/2002 of the European Parliament and of the Council of 13 May 2002 amending Council regulation 2027/97 on air carrier liability in the event of accidents. In my humble opinion, not only does it mandate that we must give these extraordinarily long notices, two of them, but, I think, technically, depending on the definition you put on certain provisions, it is physically impossible for carriers to give that notice. One of them is, "in addition, . . . all air carriers shall . . . provide each passenger with a written indication of: the applicable limits for that flight on the carrier's liability in respect of death or injury, . . . ." We all in this room spend our lives trying to determine what regimen applies that particular flight. Was that an international segment; was it a domestic segment? To ask every carrier to provide that and every travel agent around the world to provide that with each and every ticket is just mind boggling. And if, as is being suggested, what the commission means by that flight is an interline flight, you have to provide that information for every segment. Imagine. I mean it is physically impossible. How are you going to do that? This room could not sit down and come up with it, and yet the carriers are being asked to implement this. It is crazy. Again, if one can understand some of these, I am not sure another notice is really going to serve
anybody any good. How many people actually read those notices, much less understand them? This is one where I am not even sure I understand, but I guess, in the name of consumerism, we are doing something to make the passenger feel better.

Environment: We heard on the previous panel some of those issues. Stage IV is legislated obsolescence of perfectly good equipment. The EU wants to push trains to the detriment of air travel. That's fine for perfectly good environmental policy; but what should the shareholders of Lufthansa and KLM make of that when their own governments are trying to discourage customers from using their product or at least within the European Union? The only other industry I know where governments are trying to discourage use is tobacco, but again, are we really in that league. Is that the league we are playing in?

Ownership and control: We heard about it. Competition authorities: Again, same issues.

Government policies: Definition of the relevant market: Air Canada is eighty percent of the Canadian market. Are they one monopoly provider in Canada or dominant provider or should they be considered one of seven or eight in North America? There are some ownership and control issues there, but those are not the only ones obviously.

In conclusion, government policy on the aviation sector is influenced by many, many public policy considerations. This is perfectly legitimate if the state assumes a cost or if the state owns the airlines; but I think it is extraordinary to impose these costs on airlines. It is not at all clear to me why these public policy considerations should be funded by the shareholders of Air Canada, Lufthansa, BA. And, the philosophy of users funding all costs of the system ignores the benefits to society as a whole. The traditional rate of return on the industry, even in good years, is in the order of two percent to four percent. It is not clear to me why that industry should assume these costs, and I think it insures that there will never be a robust industry. Are governments adequately supporting the aviation system and assuming their fair share of costs of that system? I suggest to you that they are not, based on a misguided belief that passengers will or should assume all of these costs or
that somehow low cost or different models will be the savior. Thank you. Mr. Chairman.

**Paul Dempsey:** Thank you, Rob, for those comments. I think we will hold questions until we have heard from our international airline representative. Paul Jasinski has been general counsel of the Americas for British Airways for a decade. He represents the company in all matters involving the United States, Mexico, and Canada, and before that he was vice president and general counsel of Republic Airlines, a company I have not heard about in a long time, absorbed by Northwest back in 1986, I think. He also held senior legal positions at American Airlines, United Airlines, and TWA. He is a graduate of Boston University.

**Paul Jasinski:** Thank you, Paul, I appreciate that. It is great to be here. Thanks to the co-chairpersons and to the University of Georgia for inviting me. I have always had an inclination toward academia, and sitting here I am reminded of how far from that I have gone. As we have tried to endure the last couple of years, it really looks a lot different from the foxhole that I work in than it does in here; so it is good to be here and get a taste of this for a change.

My remarks have been considerably reduced over time, because the first panel stole a good portion of them, and now Rob Donald has just done some of that as well. I could not agree more with his comments, and I will, therefore, not go through his issues except generally. So this is going to be fairly short and sweet.

What has happened, in my practice anyway, is we have had to deal more with trying to salvage the business as we have moved away from the rarefied atmosphere of theory and into hard-nosed reality. It takes an opportunity like this, for me to talk about how we see the world, very sober actually. I will not dwell so much on the company itself, but our experience at British Airways has been like that of other carriers; we are doing everything we can to survive. We had the good fortune of getting a new chief executive, Rod Eddington, at a very good time. He read very quickly, before September 11, that industry traffic was softening and that there were troubles ahead for the industry, and he started a campaign that now has been written about a lot in the press called *future size and shape*, which turned out to be very fortunate. Of course that
accelerated with the events of September 11, and it has been a huge reshaping of the company. I think the biggest and saddest part of it is we have had our share of major manpower reductions. We have a goal of 13,000 by the end of the year. People are your biggest asset in a service industry, so that is the most painful part. Fortunately, we have been able to do it in a pretty good way with attrition, and so forth, but, nonetheless, it is very, very painful. Capital expenditures are on hold and tightly reviewed. We have restructured our short-haul services in Europe to deal more effectively and compete more effectively with low-cost carriers. We certainly respect their right to compete and respect competition and want to be in that game. We have taken twenty percent of capacity out of the business in the last two years, twelve percent of that on North Atlantic, and on and on, and it is not over yet. We have managed to have results that have not been totally dismal, mostly because the cost savings have paid off; but, we are living off of cost savings at the moment. We just do not have a lot of revenue coming in.

So there is little doubt the industry is in a fight for survival, and it puts the issues that we face in stark relief. I do want to comment on one thing that Rob said that I think is very pertinent. It is striking when you step back from our industry to see how long and extensive the food chain is in the aviation business, and how profitable other segments of it have been. For example, look at how difficult it is for airlines to negotiate reasonable booking fees from global distribution systems which have a tremendous amount of market power in the way they operate today. Airports have done well. Vendors have done well. Airlines always have the most pitiful return. I think one thing that September 11 has done, as well as circumstances now, is to tell us that we cannot postpone the day of trying to get this industry right any further.

One of the things I was tempted to do was to get into things that are fun to talk about at occasions like this, for example, all the difficulty British Airways and American Airlines have had trying to get antitrust immunity for their alliance and maybe some of the nuances about the ECJ decision. But, that is the past; it is history now and we are beyond that. We have to look to the future at where we are going and how we are going to fix this business.

The whole reason why we have all this trouble with alliances, of course, is because we cannot merge in this industry like everybody else; and there have been enormous imperatives, huge reasons why we might want to merge.
We are a transportation industry, a network industry. There are network efficiencies that are logical for us and a reason why we should merge. Railroads do it, not without some pain I guess, but they have been doing it. There are about four left in the United States. And look at telecommunications; I just cannot keep track of any of the names anymore. But not in our business. So we do these alliances and code sharing and all these things, but it is not the real thing. The ECJ decision, which has been talked about, hopefully is just the beginning of the end of an outmoded and totally failed bilateral system. We have to move on. I think one of the biggest imperatives in our company is that the mandate has got to pass to the European Union to get a multilateral negotiation going, because it is the only way that the market is going to be able to sort out this industry. There is overcapacity; there is a need for consolidation. There are just too many rules and restrictions. All these things hamstring us. And when you add that to the kinds of things that Rob was talking about, there is little prerogative in this industry in trying to survive and make money. If governments are not pounding you, we have all these special rules and restrictions that go back forty years. And even though we are deregulated, we still have the characteristics of a utility. We are capital intensive with long-term acquisitions to face that are very cyclical. We are labor intensive with all the costs and tribulations that brings. And we have a very small return, which always made me wonder why people like Warren Buffett, Carl Icahn, and others found this industry attractive, at least once anyway; they don't seem to come back. It is a very, very difficult business.

One of the things I could not help but think after Rob went through his litany of how government leans on us is that you all must be thinking, Boy, airline lobbyists must really stink. (laughter) But there is something about the airline business that does make us very different and very politicized. There is a kind of visibility about this business that makes me realize that as we come to the passing of the mandate, and we come to try to hammer out something multilaterally, it is going to be difficult because the most important thing that can be mustered to do that is political will, and that is something that has been absent in this business. Look at deregulation in the United States: That was a bipartisan thing that took off like wildfire. I think there is still a romance about this business. It was not trucking deregulation that started it. I guess the fact that the price of lettuce would go down five cents was not as attractive or romantic as Aunt Tillie getting to Los Angeles for ninety-nine bucks. The airlines were a natural for being at the forefront. But,
I find myself thinking a lot about how difficult it is to get political solutions in this business—all the reasons you indicated, Rob. To some extent, we are our own worst enemy if you look at how airline lobbying works. Very often we are busier cutting each other's throats than trying to present a unified position to government. So a lot of blame lies with us. The point I am trying to make is that we are on the threshold of big changes. The current environment, September 11, has forced this on us. The problems are now obvious. The tide has gone out and it has revealed all kinds of detritus lying on the shore that has to be dealt with. All kinds of costs that have to be taken out, all kinds of efficiencies have to be found, and we need to get on with it. And again, I just hope that that will begin with the passing of the mandate in June.

The other thing I would like to comment on is state aid, which is a big concern to Europeans. Europeans, and certainly my company, find it very ironic that since September 11 the market has pretty much cleared a number of failed carriers in Europe—often seen as a bastion of dirigiste. We have lost some hallowed names. And yet, in the United States the market has not cleared anything. All the analysts are saying that there is twenty percent—I keep saying twenty percent, whatever the figure is, but it seems to be something like a fifth too much excess capacity. Instead of the market being able to clear that, we have Chapter 11 which allows the sick and wounded just to keep on going; which allows managements that were involved with the problems, whatever they were in the first place, to continue on running their companies. That puts tremendous pressure on systems in other places, certainly in Europe and other countries where we do not have that kind of direct aid or indirect aid, if you want to call it that. And the U.S. has been pretty generous in government handouts since September 11. It is quite ironic, I think, that the U.S. seems to be the largest bearer of subsidy, whereas in Europe, again, the free market pretty much has been left to its own devices. Even on insurance we have gotten very limited relief. Compensation for what happened after September 11 was for only a matter of days, compared to a five billion dollar payout in the U.S., with almost a billion dollars to some carriers. So state aid is another thing. If you are going to a level playing field, you cannot do it if carriers are being indirectly subsidized or burdened the way Robert described. And the good thing about the mandate passing is that it will get some of these sacred cows out of there to be looked at and negotiated on, ownership and control being first and foremost. I do not see how you can
have a liberalized environment (and that has been our position for a long time) without taking off the restrictions on ownership and control, cabotage, and so forth.

The only other thing I think I would say is, since September 11, obviously, terrorism is a big issue. I do not want to harp on this, but I cannot resist the comment. Governments and airlines need to work together to deal with terrorism and terrorism-related problems. One of our big disappointments in the U.S. at British Airways—and I think other carriers shared it—the very first thing that happened when suddenly we had to produce manifests and names and so forth was a massive penalty regime. This strikes me as an odd way to deal with somebody that you have to partner with. We are the ones who had the information so it has to come from us; the best way to get that information is to work with us. Fortunately, I have seen signs that the U.S. agencies, particularly Customs, are moving toward more of a dialogue and a more enlightened approach to this. I hope that continues to be the case, because we need to deal with the terrorism issue and work with governments and reduce that as a threat to our industry and to the public at large. So, we will take all the help we can get. There have been a lot of learned comments in this conference. I hope that out of conferences like this will come some solutions to our problems. I just tried to pick a couple of the big ones that we would love to see happen that I think would do a lot to help us going forward. Thank you, Paul.

Paul Dempsey: I think it would be good now to stop and ask a couple of questions. As chairman of the panel, I am going to ask the first one to Paul Jasinski. You said that you would welcome negotiations by the European Community with the United States. If the United States enters into those negotiations, one of the things they are likely to want to negotiate is improved access to Heathrow by more carriers than just United and American. Is that something you would welcome?

Paul Jasinski: Sure. If we get into multilateral negotiations we are talking about exchanges of route rights. We have been exchanging route rights for years; this is just a different way of doing it. Once you have the right to fly someplace you have to gain access to the airport. That is a separate set of issues. People have been getting rights to fly to Heathrow constantly, on and off in the recent past, even before traffic went south; they find slots to do that.
If there is a slot problem or there is an airport access problem, that can be dealt with discreetly. We have to have an open environment for exchanging route rights. If there are access problems, that becomes an issue of fairness and the opportunity to compete between carriers and government, and we will sort those out. I don't think they are the same problem; I think they are two different problems.

Paul Dempsey: Oh but aren't they? The U.S.-UK Bermuda II bilateral air transport agreement restricted access to two U.S. carriers. At the time it was concluded, they were PanAm and TWA. There have been substitutions for those two original carriers, so it was in the bilateral itself, which is very unusual.

Paul Jasinski: That was unusual indeed. We would like to see that liberalized.

Paul Dempsey: You heard it here.

Unidentified Speaker: What Paul is saying is that you are allowed to fly, you just cannot land. Because the reality of the bilateral process is that the governments like to think of themselves as dealing with route rights, which is what Paul just said, but not slots, not landing rights. They will provide unlimited access and designations for U.S. carriers to serve Heathrow, but you are on your own to try to get the necessary slots. That just does not work, and it is not fair, because the U.S. government had high-density rules at its slot-controlled airports like JFK and O'Hare, but foreign carriers could get as many slots as they needed to get access to those airports. In fact, at many times it came out of the hide of U.S. carriers; but, it doesn't seem to work in retrospect. So, I think there needs to be a solution for the multilateral regime that addresses the issues of slots to provide the kind of access that U.S. carriers and other entrant carriers to Heathrow and other restricted airports can utilize.

Paul Jasinski: No, if I could just make a comment on that. I do not deny that the issue of airport access has to be dealt with in a liberalized environment. I am just saying we have to be careful. We should not mix up the trading of route rights, which is one mechanism. The issue at Heathrow is that those slots have scarcity value, but that is true for access at almost any airport in the world. There is some quantum of scarcity value, except there is more at
Heathrow, and that is an issue that has to be dealt with. We have watched competitors come in and put new service over our backs on many routes; consistently they get slots. They sometimes get them from their alliance partners. Delta Air Lines, for example, has a relationship with Air France, which has slots at Heathrow which they might find that their alliance works better for long-haul services. But to the extent that an airline does obtain rights to fly to Heathrow and it cannot get access because of slots, that is an issue that has to be dealt with and we will get to that issue. Let's liberalize the system, let's get the trading of route rights done, and then we will deal with proper access to airports as best we can. There is a neutral slot mechanism for allocating slots at Heathrow like at other airports. It works reasonably well. To be honest with you, it is not clear to me how it will not work well for any U.S. carrier that should start some reasonable amount of service. A large amount of service, obviously, is going to put a strain on the system if everybody wants to fly at the same time; but there are ways to get slots at Heathrow and that will continue to be the case. As liberalization takes place and as the capacity of the airport increases, which it probably will, hopefully those problems will sort themselves out like any other airport.

Paul Dempsey: While the microphone's coming to you, let me ask another question. On state aid and the efficacy or the ability of airline lobbyists who lobby effectively, one could argue that the airlines do a great job. Every time the United States Congress comes up with an airline consumer's bill of rights, the amount of donations to congressmen goes up very sharply and those bills tend to go away. One could also say that going to Congress and getting a fifteen-billion-dollar bailout in 2002, followed by a potentially three-to-four-billion-dollar bailout this year, is a mark of great success, and that, although there are onerous rules and restrictions being imposed upon you, actually the United States Congress has been doing some things that the United States has long criticized European governments for doing, and that is giving airlines lots of money. Aren't the airlines actually doing quite well with governments, and isn't that reflected in the level of generosity we have seen in their willingness to write checks to the industry?

Robert Donald: No. The American carriers are the only ones who managed to get some form of compensation in any meaningful respect. They were also the ones who suffered the most out of the September 11 event; but, show me another example other than that very recent, very focused, and unprecedented
reason. That passenger bill of rights legislation is still out there pending; both the U.S. and the European carriers voluntarily adopted passenger bill of rights—I forget what they are called, but it is something like a passenger bill of rights or a consumer bill of rights. And the Europeans have said, That's great, but we are going to legislate anyway to varying degrees. And in the U.S., my understanding is that they are saying, We will see how that works. They certainly threatened to do it to them again. Show me any other industry that has its own special bill of rights for its customers. Do banking customers have their own bill of rights? I mean, do insurance? I would say no. The mere fact that the U.S. Congress was considering passing an aviation bill of rights just shows we are a targeted industry. It escapes me as to why.

Paul Dempsey: Wait, wait a minute. The Airline Deregulation Act in 1970 preempted the ability of states to enforce the consumer protection legislation that they enforced against every other American industry. Airlines are exempt from state regulation on consumer protection issues. Therefore, it is a federal issue, and that may be why it is being addressed at the federal level.

John La Costa: I guess my only comment on subsidies is that while they generally are not a good practice, it was not long ago that there were some not related to terrorism that were being doled out in Europe. In fact, one national carrier used it for pricing leverage pretty publicly. So, I think we should all learn the lesson that, generally speaking, living on the dole is not a good thing. That is my statement on that thought. As we move forward toward a more open skies situation and a deregulated environment, in most deregulated environments, it is somewhat unacceptable to have collusion. My statement there is that antitrust immunity in its present form is huge collusion, insomuch as you probably would not see anyone find it acceptable during the recent Northwest, Delta, and Continental code share to give them antitrust immunity on all those routes. Code share is one thing. So, something here that should be discussed in the future as we go to open skies is whether the original reason for the utility of antitrust immunity is still valid.

Paul Dempsey: Well, I would only comment that I think one of the reasons why you have immunity for airline alliances is because they cannot do what the marketplace would ordinarily let them do.
Unidentified Speaker: In the future, if we can get into a freely open, multilateral regime, for example, where carriers can fly as they wish, you will not need surrogates like that. You will have open entry, and then the antitrust laws will apply like they do to any other industry, which is hugely unusual in this business. They do anyway, but the immunity would be something that would be extraordinary.

Unidentified Speaker: Well, I think you are right. I think what these immunized alliances tell us–and we are just like any other carrier, we were trying to get ours immunized–is this the only way we can get around these restrictions. If we take the restrictions off, you do not need to do further distorting by immunizing businesses from the antitrust laws; you can let the market rule, but you have to let it rule entirely. You have to give carriers the freedom to enter, exit, price freely, and leave themselves exposed to the antitrust laws like any other business. There has to be a clean environment for that, but right now it is too hobbled. There are too many restrictions, particularly on the ownership side.

Paul Dempsey: And when we get there, the question will be which antitrust law applies. Will it be U.S. antitrust law, EU antitrust law, Peruvian antitrust law? There are different national laws that are potentially applicable to try to create a more competitive environment. But, it could very well be the different laws and different interpretation that make doing business more difficult.

Unidentified Speaker: Yeah, I guess the last question is, Will it take a challenge from an outside source to these antitrust or these immunity laws or will it come as we move through this process, because I think it is an important thing to be discussed.

Unidentified Speaker: If I could, I will just ask kind of a wild question. I do not think anybody has a specific answer for this. I agree with the need for consolidation to address some of these things potentially. Does anyone have a sense of the time line so everyone can monetize on this transformation? In the end, what we are talking about is how long and what does it take for us to get to the end game so we can integrate properly and monetize on the open regulations.
**Unidentified Speaker:** To me that is the big question because that is the question of political will I was referring to before. It is just going to be an enormously complicated political process that is going to require a great deal of determination, a great deal of disregarding special interests, a great deal of resolve, and orientation toward the goal, and your guess is as good as mine as to how soon that is going to open. Our hope is that it is sooner rather than later for the sake of the industry, but it is a very, very tough political objective. It is going to take a lot based on past history to accomplish what we need to accomplish.

**Robert Donald:** Just coming back to the immunities issue for a second: Certainly, from IATA's perspective and I think the carriers', their alliances, we want immunity and we have immunity to develop standards and efficiencies and to take cost out of the system. I think consumer and government concern about immunity is that they are looking at competition and prices to make sure there are no excess prices. I saw a statistical presentation the other day indicating that prices today are at the same level as in 1986. We know where profits are; there are just no excess profits in the industry. So I do not think immunity should be a concern unless and until the market profits.

**Unidentified Speaker:** I won't comment too much on the debate about subsidy and state aid. We see that post-September 11 is compensation and that the reformed alcoholics in Europe see it as something else. (laughter) But going back to the Heathrow question of slots. Paul Jasinski said, Let's exchange traffic rights, deal with the slots later. Even if we exchange both at the same time, one of the barriers to a deal apparently was the existence of the EU slot regulation. So this is a point where we ask what is the value added of U.S./EU negotiations? Do you foresee a situation where not only would the traffic rights be exchanged, but through Community competence and EU suzerainty over both the traffic rights and the slots regulation, a solution would be found to resolve the nondiscrimination aspects of the slots regulation and the need for realistic access to Heathrow to create a politically feasible agreement?

**Paul Jasinski:** Well, airport access is an issue with respect to all airports. Heathrow has been in the news largely because of all the controversy surrounding the attempted alliance by British Airways and American. That brought all these issues to the forefront, and there is no question that it is a
relatively congested airport. But if we go to the scale of liberalization we are talking about, this could be a problem at other airports that have night curfews. Airports in the United States have slot limitations as well: JFK during a very precise time period. In order to properly liberalize all these, I suspect that any restraints are going to have to be on the table, but they will have to be dealt with in a balanced way. This is the only way I can answer that. I think it is foolish (I am trying not to be too partisan about this) to say that access at any particular airport should be a reason not to go forward with trying to get a multilateral exchange of route rights. That is a problem that will be sorted out. If we do go to the liberal environment and carriers now have the right to fly someplace else and they cannot get there, they are therefore denied an equal opportunity to compete, and that is going to be an issue between governments that will have to be resolved one way or the other.

Paul Dempsey: Our next speaker is Gerald Gordon. He is President and Chief Executive Officer of the Economic Development Authority in Fairfax County, Virginia. He has taught at the University of Maryland, George Mason University, and Virginia Commonwealth University. He holds degrees from the Citadel, George Washington University, and a doctorate in international economics from Catholic University. He is the author of eight books—I hope you did better than I; I didn't even earn minimum wage on some of my books, so they tend to be a labor of love—and a number of articles on strategic planning, economic development, leadership styles, and other management topics. Dr. Gordon.

Gerald Gordon: Thank you very much. A few asides before I get to my remarks: First of all, to add my appreciation to the University of Georgia to everyone else's for sponsoring and hosting the conference. The last college or university at which I spoke outside of the Commonwealth of Virginia was University of West Virginia, and I started my remarks by thanking the institution for giving me the opportunity to add yet another item to my list of oxymorons, which turned out not to be very funny. Apparently not funny in Georgia either, but my conclusion was people in West Virginia did not have the sense of humor that other people do. The second aside is that our chairman studied under the two deans you see pictured on the wall. This is a true story: As an undergraduate, my constitutional law professor was Professor Martin, who went on to another institution where he acceded to a higher office and became Dean Martin. So I can actually say that I have
derived all my understanding of the U.S. Constitution from Dean Martin. (laughter)

I guess my presence here on the panel is I am the token. I represent local government and perhaps by extension, state government, and I think it is under the general rubric of think globally, act locally. Just to give you a little bit of a setting: Fairfax County is virtually all the land that exists between two very powerful assets for us. On our eastern border, in the suburb of Fairfax County is Washington, D.C. That is our suburb, the largest buyer of goods and services anywhere in the world and technology which has helped to drive our economy. On our western border—a third of the airport actually sits in Fairfax County; that's a long story—is Washington Dulles International Airport, and it certainly helps to drive the economy as well, as I will mention in a moment.

Given the nature of the audience and the topics before I came, I discussed my comments, my conclusions, with two colleagues, one in Frankfurt and one in London, just to get their observations as well. It seems that we see things pretty similarly in this regard, although I have to say my counterpart in Frankfurt was quick to agree to the exact wording, whereas my British counterpart wanted to argue every single little word, thereby sort of reemphasizing Winston Churchill's notion that we are really just two great nations separated by a common language. Nonetheless, the concepts are consistent, and so my comments really reflect some of that as well.

My overall observation is that local governments and, again by extension, state governments, regard liberalization as a federal responsibility and thereby abrogate their own responsibilities to ensure that this happens or at least to put their weight behind the effort. If you accept the notion that quality of life of any community is at least in part derived from the success of its business base and its ability to trade, then you must reach the conclusion that local governments and state governments have not only a responsibility but a selfish interest in ensuring open skies agreements and maximum access to airports around the world. The notion of a tandem evolution of air service and economic development is not a new one, and one really needs only to look at those areas where airports have been built recently or have been redeveloped to see the resulting impact on the local business in proximate corridors.
Consider for example the growth of the technology corridor. (This is not a commercial but it will sound like one.) It reaches from Washington Dulles International Airport through the heart of Fairfax County and to the District of Columbia that was Fairfax County. In 1990, Fairfax County was home of fifty million square feet of office space. Today it is 100 million square feet—actually it is 100,020,000 feet, because we count. Just to give you some concept of where that ranks against other major markets in the United States, there are 16,500 plus cities and counties that are legally incorporated in the relative states. Out of those 16,000, the top jurisdictions, in order of the amount of commercial office space, are New York, Los Angeles, Chicago, and Fairfax County. Washington, D.C. would be fourth and we would be fifth if you counted government space; but, as I like to say, we only count that which is productive, so with all due respect . . . (laughter) Much of that growth, that 50,000,000 square feet addition of the last decade, is located along the Dulles corridor and reaches from the markets of Tysons Corner, which, incidently, with 27,000,000 square feet would be the thirteenth largest city in the United States if it were a city and if you measured it that way, out to the airport and along the toll road, out to the markets of Dulles Corner, Herndon, Reston. The community has assumed the responsibility for marketing the airport, because it recognized early on the nexus between air-service enhancement and the ability to grow the economy. It has, in fact, been the lifeblood of the region's economy and its growth over the last two decades. The current Secretary of Technology in the Commonwealth of Virginia referred to Dulles as "the umbilical cord that connects us to our world markets." In fact, according to a George Mason University study, sixty-eight percent of all the new jobs that were created throughout the decades of the 1980s and 1990s, so two-thirds of all the jobs created in Northern Virginia, were in easy access to Washington Dulles International Airport. Obviously it is driving that growth. Over just the last three years, 125 companies new to the county from ownership outside the United States, all have located within a twenty-minute ride of Dulles. The last time I said that at home someone said, Twenty minutes; what's that, 40 feet? I didn't think that was funny, so I won't repeat it here.

Twenty-five years ago, the Washington Airports Task Force was created. Actually, initially, it was the Dulles Airports Task Force and later, Reagan National was added to their responsibilities. It was created as a partnership between the airport itself, the airlines, industry related and unrelated to aviation directly, and local and state government all of which funded this
organization to ensure that the airport and thereby the surrounding business community could reach their maximum potential. Still today, that organization exists; therefore, the model to replicate it around the United States or perhaps around the world also exists. There are many communities that I have observed that do not follow in that path. Years ago the airports task force was—perhaps instrumental is too strong a word, but was actively engaged in the pursuit of the open skies agreement with Canada, prior to which, in order to fly from Washington, D.C. to Toronto, you had to connect through either Pittsburgh, Buffalo, or Boston. With all due respect to anyone in the room from Buffalo, that is not an attractive option. The consequence of the inability to get the open skies agreements approved for many years was the growth of the business community in Pittsburgh, Boston, and Buffalo and not in Northern Virginia. In fact, in 1980, we had no Canadian companies in Fairfax County. By the mid-1990s, we had ten, and in the last seven or eight years, we have quadrupled that number; so clearly the accords that were reached have generated a lot of growth. And these benefits are not restricted to cargo or business travel; they include leisure travelers. There are 120,000 jobs in the region's hospitality industry that are wholly dependent upon the efficient and effective operations of the two airports. That is critical for us because that equates to an annual input to the economy of about six billion dollars.

A 1995 study by Campbell Associates revealed that the Canadian open skies agreements would yield about 200,000 new jobs and add fifteen billion dollars to the proximate economy in the just the ensuing five-year period. Other communities have also determined that air service and economic development have a clear nexus. Orlando and Dallas-Fort Worth are well known for this. Denver is becoming very active. In fact, Dallas-Fort Worth is a good case in point where, what I term as essentially provincial towns prior to this and once ridiculed as (and this is a quote) "typical Texan extravaganza," and which I always thought could be applied to a great many things but was applied particularly to the growth of the airport, is now being referred to as the most beneficial public works project in the history of the state. Similarly, one can look at airports and the surrounding communities in the which the absence of a pursuit of air service enhancement and airport development have resulted in decline or the absence of growth in the local business community.
It strikes me that part of the reason for this lack of local concern is that there is a dependence on the federal government to argue these issues, but I think the issue comes down to local politics. The conclusion I reach is that because there are not a great deal of votes inherent in funding infrastructure to the airport or in funding the promotion of air service development, there is less interest to do so than attending to the more immediate needs that generate a lot of local attention and a lot of constituent interest. I also think there is a bit of a chicken-and-egg situation in some communities whereby there is no demand on the part of the business community to promote air service so that the business community can grow. There needs to be a nascent or an advanced business community in place in order to make that argument and there is not always. This is where the sort of bedraggled political term vision comes into play. We were blessed to have had it twenty-five years ago when other communities did not seem to see that.

The results around Dulles have been quite dramatic. I do believe that they could be replicated elsewhere, but until there is sufficient demand for those kinds of expenditures, I do not think we are going to see them. Thank you.

Paul Dempsey: Thank you. Our next speaker is Frederik Sørensen. I first met Frederik when I had a Fulbright. I was in Europe writing about liberalization of air transport and I went to Brussels to speak with people who are knowledgeable. Frederik was very kind to spend some time with me. I learned from Frederik about the packages of liberalization that were in the works. The one thing that impressed me was that he and the Commission had looked at the United States experience and determined that it would be different in Europe, that there would be more of a gradual approach as opposed to the very abrupt approach to deregulation that had transpired in the United States. I commended him for that. I had been with the Civil Aeronautics Board where we very abruptly deregulated the industry in the 1970s. He was at the European Commission for twenty-eight years in air transport policy. He is an economist, holds a degree from Copenhagen University and is now a civil aviation counselor in Brussels. Frederik.

Frederik Sørensen: A New Foundation – Thank you. If I may indicate to both Rob and Paul that I feel for the situation of the industry right now, and I feel for these extra costs which are unpredictable. Let me say in that context that I happen to live in Denmark, and in Denmark if you want to buy a car,
you pay 150 percent to 200 percent on top of the price of the car in government tax. So, air transport is maybe not that bad. (laughter) The consumers in Denmark, are hit hard. It is also clear that governments can come to their senses. As an example of that, I would like to point to Belgium, which recently has limited its jurisdiction in respect to charging people for acts against humanity. I think that it is no longer possible to charge Saddam Hussein, for example, nor incidentally, George W. Bush. But, it takes something earth shattering for them to come to their senses.

Wednesday I was called by a journalist from the Danish Radio who put the question to me, "What about Scandinavian Airlines System? They are going through one of these procedures where they are going to save costs, etc. They are going to report back to the general assembly now in a few days. What kind of message would you consider to be reasonable from the CEO of SAS?" I could say to him only that, really, it was quite simple, that they were faced with a situation where they had to reduce costs, and it was not just a matter of looking at the staff situation. They also had to do something about utilization of crew, utilization of aircraft, and perhaps to do something drastic about the operation at the SAS hub at Copenhagen. All of that might be able to reduce costs and all would be well if the revenue was holding up, or coming back, or what have you, and if they did not get a strong attack from other low-cost carriers. You can say that in fairly simple terms, and that is really the message which the SAS CEO ought to put before the general assembly; but, as we already have heard today, the devil lies in the detail. Behind each of those small things, naturally there are a whole lot of concerns and very difficult issues to deal with. That is, in a sense, what I would like to try to take up today.

I have hooked onto the title of this session, a new foundation for air transport. I think it is necessary to discuss a new foundation. I find it difficult to say something really new in the discussion which we already have had, so you will see that I am going hop, skip, and jump through my presentation. The air transport sector right now is really a sector in a straitjacket. I would like to underline that, because airlines cannot do what a normal economic company would try to do in a similar situation, where the market basically falls away and where they have to try to cope with that. They cannot go to other parts of the world and try to get investment. Establishment or consolidation initiatives are blocked. We know that ICAO is discussing this
but that is going to take five, ten, fifteen years. I think it is that order of magnitude. It certainly is not relief in the short term we are talking about there. Ownership and control and establishment restrictions are key barriers. We have heard that already. And then the basic question, which was in fact discussed at ICAO, namely, whether a country needs its own air carrier: Until countries come to the conclusion that they don't, it is going to be very difficult to carry out the necessary consolidation. But that is really what one should discuss today.

I am going to introduce a number of assumptions: first of all, a situation when economic recovery has taken place. I think it is going to come back. It is bad right now. Some airlines, with or without assistance from the governments, will survive. The market will recover, at least in a fashion. I think it is quite clear that passenger numbers will come back. I am not sure that the passenger numbers will come back with the same revenue. I think the revenue will go down. One can always discuss how quickly will an EU-U.S. arrangement be arranged. In many ways, I think that it can be arranged fairly quickly, because there is not that much of a difference in the main issues between the EU and the U.S. I think that negotiations are going to focus on the ownership issue; that is the most important one. Sooner or later, one would have to come to a result on the ownership issue, otherwise it is going to take a long time. But, the other issues can be dealt with, I think, in a fairly speedy process.

Ownership requires some sort of political will. We have seen political will in Europe up to the three packages. It was very clearly politically promoted in Europe and this liberalization took place over the obstruction or protest from a number of civil aviation administrations. But the ministers wanted the liberalization. There was also this political pressure in the U.S. up to deregulation. Right now there does not seem to be that much of a political pressure. I think in Europe you find it in the European Parliament. Among governments, must less so today, although it is true that the heads of states have said that a swift decision on a mandate must be taken. But still, the real political will: One can query whether that exists, and I would also query whether that exists in the U.S. Hopefully everyone will be able to reach an accommodation. So, if there is political will, then an EU-U.S. arrangement ought to be in place when recovery comes; that is in about two years. There,
I am less optimistic than other speakers. We have heard from one year to eighteen months. I think it can take even longer than that.

Then there is the question of state aid. In my assumptions, I go out from a situation where no state aid would exist. I would like to underline that. At present, there are no international rules on state aid in aviation. None. GATS (General Agreement on Trade in Services) aviation is, in principle, covered but has been exempted. As a consequence, no state aid rules under the GATS regime would apply to aviation. I think it is going to be absolutely necessary for an EU-U.S. arrangement to specify or to come to some sort of understanding on state aid. I remember very well a couple of years ago the U.S. was thundering about the practices in Europe—state aid, etc. Now the stream of comments has sort of reversed, so I think that it is necessary to come to an understanding of what is acceptable and what is not. I think in the end it is going to have to end up with no state aid.

Already now one can see that the market pressure is leading to cost implications; the lack of revenue, in particular, is driving costs down in a way that I explained to the journalist from the Danish Radio. I read an article recently which puts it in a very thought provoking way. It really looks at the long-term trend of CASM, cost per available seat miles, and where the long-term trend goes towards a CASM of about ten to eleven cents. One should not try to give publicity to competitors, but there is an extremely good article which you can find on the Booz Allen Hamilton web site (http://www.bah.de/content/publikationen_events/5a_organisation.asp) called "Airlines: A New Operating Model." It goes into the long-term effects of the present day situation in quite some detail. A number of things which I am going to say today, you also are going to find in this article. It is excellent. Taking the revenue and cost trends in the U.S. from 1978 until today basically, 2002, it is very clear that the costs of operation have gone down very steadily during that whole period. Without September 11, without the present-day disturbance, the costs would have gone down further. The costs of fuel have been going upwards, but now the costs of fuel are beginning to go down again. One situation seems to be resolved in the Middle East, to some extent at least, and, as I said, the long-term trend seems to indicate that one is moving toward a CASM of about ten to eleven cents. That in itself indicates changes to the air transport sector, and I do not think that the U.S. trend is going to be different from trends in other parts of the world. In Europe we are seeing the
same pressure on costs and the same reaction from the airlines. The cost per seat mile is going down, and that naturally puts pressure on salaries, utilization, etc., like I just said in the introduction.

The network is also being affected by all of this. We already heard about the report from the Brattle Group, which tried to give an idea of what would happen in a liberalized transatlantic market. Basically, the Brattle Group comes up with a number of positive effects of a liberalized transatlantic market. What they are not really going into is what is really going on with the low-cost sector. One thing is that they do not recognize that in Europe the low-cost sector accounts for more than fifty percent of the traffic. The Brattle study has not taken account of the charter sector at all, and the charter sector accounts for about fifty percent of air traffic in Europe. The big question, therefore, becomes—if we include them in the low-cost sector—if we take this traffic, these operators, these airlines into consideration together with what we traditionally call low cost, are they going to stay in Europe, are they going to stay in the U.S., or are they going to begin to take an interest in the transatlantic market? I think that, in particular, if you take the non-scheduled into consideration and really create a liberalized transatlantic market including them also, they might well begin to take an interest. Laker several years ago already did so, but not with a real success. A carrier from Germany, LTU, has basically transformed its non-scheduled services on the North Atlantic into scheduled services, in name at least. LTU programs and operates them as scheduled services, but it is really still charter demand which they carry. I think that it would be wrong to expect that in a liberalized EU-U.S. market that the low-cost sector would stay out of the North Atlantic.

Structural implications: If it becomes possible for consolidation to take place in Europe, will it take place? I believe so. For this to happen, the EU needs to be recognized as an entity. I would say that would represent the same situation as the U.S. has recognized in the APEC, the KONA arrangement. If that happens, then I think consolidation will take place in Europe. I think that what we have seen in Scandinavia with SAS will be replicated in other parts of Europe. I think also that if a transatlantic opening of the ownership restrictions will come about, then consolidation will take place in the transatlantic market also, irrespective of the situation with third countries. There are beliefs that, to a large extent, third countries will take an APEC stance and say, Okay, we will accept that there is consolidation between the
EU and the U.S. They will not try to stop that but will try to accommodate it as the resolution from ICAO to some extent expresses. They might try then to introduce some other restrictions in traditional bilateral agreements, but I do not think that they are going to try to stop consolidation. I think that regional air carriers will grow. We have seen in Europe that they have grown enormously during liberalization, in fact all the way back from 1983. I think that non-scheduled carriers have been hesitant to make real changes in their operations, because whenever they have started scheduled operations, they have found that the costs of scheduled operations are higher than non-scheduled, and they have seen their non-scheduled operations being poisoned by cost increases from the scheduled flights, to express it in that way. But, I think that if the market grows to the extent that an EU-U.S. market would indicate, then there will be some changes in the operating pattern of non-scheduled air carriers.

Outsourcing is going on right now, certainly in Europe. I think it is going to increase in scope, and it is going to be something which will happen and which in itself may have some implications on safety if you are not checking it and controlling it correctly. So the safety oversight will have to be beefed up, in step with the fact that outsourcing is increasing in scope.

I am not going to say too much about distribution except that there you have another sector of the air transport market which is in the squeeze. The travel agents are really being hard hit right now because of the increased direct contacts between airlines and their customers, which, in many instances, is being reflected in the type of commissions, the structure of commissions, which airlines pay to travel agents or maybe even lack of same. So, you ought to have sympathy with travel agents also, because they also are being squeezed like you are being squeezed.

Does a country need its own air carrier? I do not believe so. I think that this argument against liberalization is not relative at all any longer and furthermore, it is dangerous. If you try to protect your national air carrier, you inevitably end up with an inefficient air carrier. There are a few exceptions, but if you want to handicap your own air carrier, it is very good to try to protect it. Also, we have seen in a number of instances where if a bankrupt air carrier is really cleared by the market and falls away, then other carriers will step in. That was recognized at the ICAO conference just a few weeks ago.
If you have been protective beforehand, then the gap which is left by the bankrupt air carrier will be filled at a slower rate than if you have a liberalized market at the beginning.

It is very clear that nobody wants flags of convenience. If you open up for ownership, then flags of convenience must be stopped in one way or another make sure that security oversight, safety oversight, is really at a very high standard throughout the market, that the airlines which are getting into routes to your country are properly controlled. The concept of virtual air carriers where you have separated the branding, as Otto Grunow was expressing it this morning, from the traffic rights certainly have existed, and they do exist in Europe. For example, EasyJet for quite some time was an air carrier without any aircraft. They used an air carrier called Air Foyle to operate for them. They did not have any aircraft themselves. You see tour operators; tour operators are selling the product directly to the customer. You do not see which airline you are going to fly with until at the last instance when you go onboard the aircraft. I think that virtual air carriers, in one way or another, will come about to a large extent. Tour operators are licensed as air carriers in some of our member states. I think that this is necessary to do so in the whole of the EU. I do not know how the situation is in the U.S., but, if tour operators have the possibility to act as a virtual air carrier, then they ought to be licensed in a proper way.

In this context, I would like to point to an ITF paper on social conditions, working hours, and what have you. I fully agree with Russ Bailey that something has to be done on the social side in order to discourage or eliminate the risk of flags of convenience. I am not going to repeat what John Kiser said, but I fully agree that these common aviation areas, whatever they may call them, are coming up all over the world. For them to exist, like the European Community, ownership has to liberalized, and common ownership has to be accepted. In the future with these common aviation areas, with a liberalized air transport, it is necessary to have a development of the concept of fair competition. It is absolutely necessary to have a way of working together on application of antitrust and competition rules, not only between the EU and the U.S., but in the larger context also. I would like to point to the fact that GATS has been trying to look at whether it is possible to establish a common set of principles for competition rules, antitrust rules.
One ought to talk about convergence in the application of the rules, not necessarily to change them, but in particular, cooperation, so that whatever one party is going to do in this respect is known by the other parties and not end up in a plus-plus situation, for example blocking alliances. You end up in a situation where you have, in many instances, a common goal, and you ought to find a shoe that fits in cooperation with each other. I believe that ICAO, as it started to do, needs to take its role in respect to safety oversight very seriously. I think that this is a role of ICAO, which, in itself, is going to support and promote international liberalization of air transport.

Conclusions: Protectionism may be tempting for some, but would be catastrophic by preventing the sector from making the necessary structural changes. When I talk about protectionism, I consider ownership restrictions as a form of protectionism. One cannot let down on safety and security. Fair competition has to be ensured, and we do not want any flags of convenience. I think that has to be a basic part of the foundation for aviation in the future. Thank you.

Paul Dempsey: Let me invite a question from the floor if there is one. Yes, Ms. Erkelens.

Catherine Erkelens: Catherine Erkelens, Bird & Bird. I have two questions, one for Robert Donald and one for Frederik Sørensen. It is in relation to the international framework, which is still existing, the Chicago Convention, and the role of ICAO. Rob, you mentioned the issues of taxes and charges which the airlines are asked to pay to several local governments. My question is, are local governments not too much forgetting about this international framework, which the body of the convention of Chicago has direct effect in the different countries which ratified it, so it is local law. You have Article 15 of the Chicago Convention in relation to taxes and charges, part of it. You have also the recommendations, which maybe have not a direct effect. But on taxes and charges, ICAO recommended to have charges which are in relation to the costs of the services which are rendered, which allows a certain control over that, and taxes should be avoided. So, are you saying that these are not effective anymore or are not respected? That is the first question. The second question is also in relation to the Chicago Convention. Frederik Sørensen mentioned stay date. There is no global regulation or ruling on stay date, you said. My question is, if you do it in a global way, it would be within the ICAO
form as well, necessarily. But then you said maybe we should do it between the EU and the U.S. in the first stage in any case. My question is, is this not going against the spirit of the Chicago Convention which was very much also respecting the principle of sovereignty of the states. Is the stay date issue not going a little bit too far in relation to the principle of sovereignty, and how are we going to solve that? And can you do it, then, between EU and U.S. if it is not within the spirit of the Chicago Convention?

Robert Donald: Your question deals with Chicago, Catherine, and everyone here knows Chicago infinitely better than I do. I am not sure I have even read the whole thing from cover to cover. I am a corporate commercial attorney, but, a couple of things: I think a good example is the example I gave of Ansett, Australia and the government imposing a fee for pensions. Clearly they ignored the Chicago Convention and they ignored the ICAO charging principles. And as I said, we sent a mission down to try and plead with them and explain this all to them. One of our directors in Montreal had an op-ed piece published in the local newspapers. The problem is that there is no enforcement mechanism. The enforcement is with states. There is not a state in the world that was willing to take that up on behalf of the carriers. Carriers have no ability to take a recourse on their own, and no state will do it. Why? Because they know that they will be next. Nobody wants to start that game. Secondly, even if some of them are permitted under the Chicago Convention, it does not mean they have to be imposed. My position is that, frankly, it has gotten completely out of control, and, even if it is permissible in some sectors, the governments have to start assuming these costs themselves rather than just simply passing them on to consumers.

Catherine Erkelens: We need to apply the Chicago Convention, and we are obliged to do it even though the political decisions are contrary to this spirit of the Chicago Convention. I do not want to talk for my business, but litigation could be a solution for that.

Robert Donald: And occasionally carriers have done that. You have had some success in different areas with that. I think as recently as Friday, two days ago, the FAA charging scheme was overturned and it is in the Court of Appeals. This is the third time we have had to consider this and the third time we have declared it to be legal. It was a wonderful direct quote. They just slammed the FAA for their charging principles. Fine. So sometimes litigation
is appropriate where we have direct access to the courts; but, on Chicago and those charges, it is a general rule; it has to be a state. So, over to Frederik.

**Frederik Sørensen:** I am going to start with the notion of sovereignty. It is true that the Chicago Convention does state that states are sovereign, but the air transport section is not different from any other economic sector. States are sovereign when it comes to trade. A state is sovereign in very many respects, and states can exercise their sovereignty by concluding agreements with other states, by concluding agreements in international fora and saying that they are going to exercise their sovereignty in certain ways. I do not see that this notion of sovereignty of the Chicago Convention in any way would stand in the way of an agreement between the EU and U.S., which would commit either party to certain behavior in respect of state aid. The EU already has done that in its agreements. The European economic area, which also covers air transport for Norway and Iceland, state aid is included there. In the aviation agreement with Switzerland, state aid rules are included. I do not see any reasons why state aid should be kept out of an arrangement between the EU and the U.S.

**Paul Dempsey:** Yes. One more question. This gentleman here had his hand up. Please identify yourself.

**Unidentified Speaker:** I have two questions: One, in terms of security costs that the airlines are bearing right now and that you have maintained should be part of the governments' responsibility, how far would you take that? Maritime industry has to maintain some of its own burden for security as do other industries. So, is there a 100 percent government responsibility? Is there shared responsibility? What would be the fair responsibility? The second question has to do with the investment issue. A lot of the blame has been put on the limitations of foreign investment. Is that really the case, or is it the case that the airlines are not in shape to have people invest? If that investment limit was increased, who would invest in them right now?

**Unidentified Speaker:** That is a very good question. Take United Air Lines: Today, given United Air Lines condition, the StarAlliance partners would suffer a huge loss of traffic if United were to implode, but would Lufthansa and Singapore Airlines really be keen on investing in a company that had that kind of financial and cost structure? Paul?
Paul Dempsey: I am amazed at how people will always invest in the airline industry under any circumstances. It is like race horses and ball teams, to be honest with you, and it attracts some of the premier investors in the world. We even have restaurants setting up airlines. As Alfred Kahn said, There is something about airlines that drives people crazy. I had lunch with Costa Pereira from Brazil. He was telling me that he had a very good friend who was a millionaire in Brazil, and he had made and lost his fortune several times. He says that there are three investments you do not want to make: slow horses, fast women, and airlines, and he said, But all three are a lot of fun. (laughter)

It was pointed out this morning that the airline industry is suffering from a number of pejorative descriptions, including cataclysmic, apocalyptic. The North American airline industry, according to the head of the International Air Transport Association, is in ruins these days. I want to talk about that, and why it seems to be happening. It is always good to ask three questions, so I will ask three questions. How severe is the contemporary crisis, what caused it, and how will the airlines extricate themselves from it?

If you collect articles about the airline industry, as do I, and if you go back to the early 1990s and the early 1980s, the headlines are essentially the same. They talk about bankruptcies; they talk about financial hemorrhaging; they talk about acres of empty seats, airlines being parked in the desert, bankruptcies and liquidations. For me to understand what will come, I always have to look back historically as to what has happened. The year 2001 was turning out to be a miserable year financially for the industry, even prior to September 11. The dot-com high-tech bubble had burst, and people who were willing to walk up and pay very high Y-fares tended to disappear. The economy began to fall flat; consumer confidence began to wane; the companies started to show the first signs of recession; and everybody began to tighten their belts, business people and leisure people. The events of September 11 were compounding in that there you had a situation where the entire fleet was grounded for three days; tremendous economic loss was suffered by the industry. The public was saturated and horrified by repeated visions of aircraft crashing into the World Trade Center. Then that was followed more recently by war in Afghanistan and war in Iraq and a spike in fuel as a consequence of those, both depressing demand and increasing costs. Out of that thirteen billion dollars, the U.S. taxpayer paid five billion, but the
airline industry suffered the other eight. The year 2002 was not a lot better year. In fact, it was nearly as bad: 9.5 billion dollars. And if you take a look at this year (2003), if the war is prolonged and people continue to be as fearful of flying as they are today in international transportation, both across the Atlantic and across the Pacific now because of fears of communicable disease, the losses are projected to be as high as thirteen billion this year: a cumulative loss for the three years potentially of as much as 36 billion dollars.

Now you have to view everything in perspective, because everything is relational. Since the airline industry was created, it has lost all the money that it has ever made since the Wright Brothers flew at Kitty Hawk. It did twice in fact. The contemporary loss is worse than any prior recession the airline industry has ever suffered. If you go back historically, before deregulation the worst year the industry ever had was 200 million dollars of loss, and it had profits on both sides of that year. If you look back historically, the causes are not radically different. It was excess capacity relative to demand, stimulated by the purchase of large fleets of wide-bodied aircraft—the 747, the L1011, DC10—coming online at a time when the economy went into recession. Then in 1973, you had the Arab oil embargo, which sent fuel prices up 300 percent. So the 1970s were not a pretty period. But, the regulators had a response: They decided that they were going to insist that the airlines engage in cost-based pricing because airline fuel costs had gone up very significantly. They allowed some capacity limitation agreements and gave the industry antitrust immunity to pursue those, allowed some route swapping. The regulators imposed a route moratorium so that there would not be more capacity in the industry, and as a consequence, the economic losses actually were not nearly as bad as what had happened subsequently, the worst up until that time however. Then we deregulated, and in the early 1980s you had a confluence of a number of events—a spike in fuel again, recession again—and the industry lost 1.4 billion dollars. The 1990 to 1994 period was truly catastrophic. That was preceded by PanAm 103 explosion over Lockerbee, Scotland, which depressed traffic in the North Atlantic. President George Bush, the Elder, had launched the war in the Mideast, Operation Desert Shield/Desert Storm, fuel prices had gone up, and we were in recession. For the five-year period, the industry lost thirteen billion dollars. And, compared to today, we are three years into this, and it does not appear that the economy shows much sign of improvement yet; but hopefully it will in 2004. So, in summary, the economic
losses have been enormous, and they have grown progressively worse since deregulation.

The reason I talk about deregulation, is because deregulation is the domestic form of liberalization. Before deregulation, there were no airline bankruptcies of major carriers. There were some charter carriers that went belly up, and there were some supplemental carriers that were liquidated, but no major ones. The failing company was handled the way the banking regulators handled it–if there was a weak airline, a stronger airline was encouraged to acquire it. Delta acquired Northeast and United acquired Capital. Since then, in the first of these cycles, 1981 to 1982, there were two major airline bankruptcies and one liquidation. The liquidation, of course, was Braniff, the result of obscenely bad management in an environment in which they were free to compete. In 1990 to 1994, there were five major airlines in Chapter 11 and two liquidations: PanAm and Eastern. TWA survived that, but it did not make a profit for thirteen consecutive years and ultimately was acquired by another airline to keep it from being liquidated. More recently, we have the bankruptcies of U.S. Airways, United, and Hawaiian Airlines so far, but more are likely without government support. In fact, there are some analysts who predict that most of the major airlines may find their way into Chapter 11 unless there is a significant improvement in the economy or a significant cost reduction.

Major airlines have an unsustainable cost structure. Labor costs are a pernicious problem in the industry. Well, I would say it this way: If you are familiar with baseball and you look at the Alex Rodriguez' contract with the Texas Rangers, he earns twenty five million dollars a year for more than ten years. Now, he is a good shortstop, he hits forty home runs a year; but that contract created in that industry an unrealistic paradigm of unsustainable expectations among employees in the baseball industry. I would submit that the contract concluded with the pilots at United Airlines, wherein senior captains in international service were paid more than $300,000 a year, created an equally unrealistic expectation among labor groups in that industry that were unsustainable. This was fueled by an excessively exuberant economy that was profitable based on the bubble created by the dot.com high-tech section. Fuel costs are always a problem. It is very difficult for airlines to deal with fuel and every time war erupts in the Mideast, fuel goes up. That is a very significant part of industry cost. Security costs have gone up very
significantly too. If you believe the airlines, the total cost in terms of both out-of-pocket expenses and lost revenue is somewhere between two and four billion dollars.

The hub-and-spoke system created a method for distributing passengers which is probably here to stay. The advantages on the revenue side are that flight frequency generates more business traveler revenue, and the connectivity allows the marketing of an array of origin-destination points that expand geometrically as the hub expands. The problem is on the production side of the equation, not the revenue side. On the production side of the equation, hubbing mutilates efficiency of aircraft utilization and labor utilization, and it increases fuel consumption, and all of those things drive costs up. In an environment where the economy has gone flat and businesses are not as keen on flying the company with the most frequency, you have a situation where revenue dips below cost and a high-cost structure does not really work very well. It is telling that the only major airline to consistently be profitable in the United States is a company that eschews the hub-and-spoke system, Southwest Airlines, which operates a linear route system. New entrants and linear route carriers have a significant relative cost advantage, vis-à-vis the major airlines. For the industry as a whole, labor expenses account for ninety-five percent of total costs, but for some airlines it is up to close to fifty percent.

Capacity is cyclical. It is cyclical by time of day, day of week, week of month, month of year, and it is also cyclical, dependent upon broader macroeconomic cycles in the economy. As a consequence, airlines tend to offer excess capacity relative to demand. When demand turns south, airlines have a very low variable-cost product that is also instantly perishable. Therefore, they have an incentive to sell as much of that product as quickly as they can. The internet is making that possible in ways that have never been possible before; but, it prohibits the airlines' ability to hide the ball from consumers as to what the lowest available price is. As a consequence, airlines have an incentive to sell seats at a price that covers their variable cost. If you engage in variable cost pricing for too long a period of time, and you do not cover your fully allocated costs, you are going to have severe financial problems. Today the airline industry has about 100 billion dollars in debt, it has twenty billion dollars of unfunded pension liability, and it has only two billion dollars of equity.
How will the airlines extricate themselves from this morass? One possibility is bankruptcy reorganization, and a number will go in and stiff their creditors and certainly stiff their shareholders and maybe stiff their employees in order to clean up their balance sheets and go back on the road in a reorganized structure. While they are in Chapter 11, they hold most of their creditors, except their aircraft owners, at arms' length, and they operate under an unrealistic cost structure relative to their competitors. They tend to price on the basis of that cost structure. That causes competitive harm to their competitors and can cause a cascading series of bankruptcies as carriers all try to spiral downward to the lowest-common-denominator price to sell empty seats.

As to route restructuring, some carriers are experimenting with remedies to the problems created by the hub-and-spoke system. American Airlines is doing something very creative in terms of having a rolling hub. They are scheduling on the basis of efficiency and allowing the passenger to connect if they can. The way Southwest operates gives it very high equipment utilization, labor utilization, and lower fuel burn. We will see if it works for American. It could, because American has three hubs right in the middle of the United States, and if the consumer cannot get a convenient connection over Chicago, maybe he can over St. Louis or Dallas.

Regarding fleet standardization, carriers are downsizing, down-gauging their fleets and reducing their fleet types. They are going back to the manufacturers and lessors, telling them to take the planes back, and renegotiating their leases. The downsizing of aircraft is a good thing in terms of right-sizing the aircraft, but down-gauging of aircraft raises CASM (cost per available seat mile), and the problem the industry has is that it has a very high CASM relative to RASM (revenue per available seat mile). It is unclear to me whether or not the consumers as a whole, in the aggregate, will be willing to pay the higher RASM necessary to cover the higher CASMs created by small regional jets and other smaller gauged aircraft.

Capacity reduction: There are several hundred planes parked in the desert. The problem with capacity is that many of these planes always come back into the market as some new entrepreneur, lured by the thought that there are three industries anyone can run—a sports franchise, a restaurant, and an airline—launches a new airline. People tend to invest in the industry for
reasons other than rational wealth maximization, and a lot of this capacity will come back because the aircraft can be recycled merely by repainting the livery.

Labor cost reduction: Labor is being asked to take very significant pay and benefit reductions. There is significant under-funding of the pension liability of the airlines. I do not see in this environment how it is going to be paid, but the surviving carriers will be those where the labor force takes very significant reductions.

How can the government help the airlines extricate themselves from this morass? One is to perhaps do nothing, let the market sort it out. It will be ugly. There will be some major liquidations. There were in the past, there are likely to be now. The problem with doing nothing is, if too large a sector of the industry is liquidated, there could be service disruptions. If you understand anything about air transportation or any mode of transportation, you know that there are profound externalities in terms of the economic consequences of having the veins and arteries of commerce become clogged. It has the same impact on the body. It is not a good thing. If you had American and Delta liquidated in relatively quick order, the economic consequences for the broader economy would be, in my view, quite dire.

You could nationalize the industry. That is an interesting idea. The Air Transport Association says the government might have to do that. If you take a look at what Congress already has done, the ten billion dollar loan program requires as a quid pro quo stock warrants, warrants to purchase stock. So the federal treasury now is becoming an owner of America West and some other airlines, such as U.S. Airways. The antithesis of competition is not regulation, it is socialism. Government ownership of the means of production is my definition of socialism. If we really are going to have the government put lots of money in the industry, we have to realize philosophically where we are going.

You could reform the tax laws. By some accounts, forty-four cents out of the first 100 dollars goes to the tax man. Rob Donald spoke eloquently about the tax burden. The tax burden, clearly, is severe. I think the Air Transport Association has said that we would prefer to be taxed at the level of the sin taxes on alcohol and tobacco. That would reduce airline taxes by half, and
they are the most highly taxed industries. Clearly those laws need to be reformed.

Reform the labor laws: Delta's Leo Mullin is asking Congress to change the Railway Labor Act. The unsatisfactory nature of the Railway Labor Act is that it is a kabuki dance. It is a dance which is very ornate, has a long extended process, and is unsatisfactory to both parties. As a consequence, service levels fall and revenue falls and everybody is unhappy. What the airline industry would like to replace it with is mandatory arbitration; that would at least lead to a decisive point earlier on. Whether it would make everybody happy or not, I am not sure.

Waive the antitrust laws: If you want to reduce capacity in the industry, you could have the industry sit down and agree to capacity limitation agreements. It would be highly anticompetitive, but in the short run, it would provide some capacity relief.

You could eliminate the foreign ownership and cabotage restrictions. There have been lots of people who have talked in favor of that at this conference and at the ICAO conference that we cosponsored in Montreal a couple of weeks back. The issues here for the United States: The foreign ownership laws were passed after World War I, and they were passed after the air component of military adventurism was revealed. We have a CRAF fleet (Civil Reserve Air Fleet) now, and you can look back historically: In the 1970s, the Shah of Iran offered to bail out Pan American World Airways and buy it. If that had happened, the Ayatollah Khomeini would have ended up owning Pan American World Airways, which would have made Operation Desert Shield/Desert Storm a more interesting episode. I wonder if Air France owned United Air Lines whether United Air Lines would have participated in the most recent incursion in the Middle East.

Then, finally, you could re-regulate the industry. Here there are several problems. One is philosophical. Nobody wants to talk about that, but the luncheon speaker said all options ought to be on the table, so let's put that one on the table for a minute. If you cannot get past the philosophical problem with it (the prevailing political, correct wisdom that "market can do no wrong and government can do no good"), then you do not want even to consider this. But, if you can get past that, then your problems are more pragmatic, and the
more pragmatic problems of re-regulating the industry are we no longer have
a homogeneous cost structure in the industry. Price regulation would be very,
very difficult; but, if you look, historically, at what regulation was designed
to achieve, it was financial stability. In 1938, the airline industry came to
Washington. They said, We have lost half of the capital that has ever been
invested in this industry. There are a couple of choices. One, you could
socialize the industry, and that is what is going on in Europe. Or, you could
regulate the industry and allow private ownership of the means of production
to compress these cycles so then they are not so radical; and, indeed, for the
forty years of regulation, they were not. It compressed the cycles and made
the lows much less low. The *quid pro quo* was, Congress said, Fine, but we
will insist that the rates will be just and reasonable and nondiscriminatory.
Nobody likes the idea of a government person dictating the fare; but nobody,
I don't think, much liked the idea of the fact that the airline industry might
collapse. And on that pleasant note, I will add one other thing, and that is this
old quote that has been circulated in transportation: "Since the invention of
the wheel, in the long term, no one has ever made money moving people."
That was true in the steamship industry, that was true in the transit industry.
Transit was private before it became public. It was true in the inner-city rail
industry. We now have a public inner-city rail industry, and let us hope that
it is not true in commercial aviation.
Catherine Erkelens: Today we will be dealing with liberalization of what the European Commission calls, in antitrust terminology, the ancillary services, more particularly the ground-handling services. After that we will be dealing with financing of airports, where we will be comparing the financing in Europe and the financing of airports in the United States. We will discuss airport management and management of airport services. We will have four speakers for that today.

We will start with Peter Bluth, former CEO of GlobeGround. We will have Robert Cohn. Robert Cohn will be dealing with aspects of financing of airports in the U.S. Afterwards we will have Pierre Klees, who is the CEO of Brussels International Airport Company (BIAC). He will be dealing with management aspects and financing of European airports. And we will have Mario Diaz from Hartsfield Atlanta International Airport, who will be dealing with management issues of U.S. airports.
The first subject is ground handling. Liberalization of air transport requires also the liberalization of the ancillary services. There is still a trend, as Peter will explain to you, of outsourcing of activities. In the 1990s, this was increasing, which had as a result a clear distinction between, on the one hand, self handling and, on the other hand, third-party ground handling (self-handling meaning the airlines effectuating their own ground-handling activities; third-party handling, meaning ground handlers effectuating ground-handling services for third parties, for other airlines). The concept of independent ground handler at that moment became more and more clear. In the 1990s, the European Commission on the European side received a number of complaints for abuse of dominant position where there were monopolies in several airports, usually airport management companies effectuating ground-handling activities themselves or sometimes in duopoly situations. The Commission was looking into this and decided to take an initiative to have this market liberalized in order to have a reduction of costs for airlines as well as an increased quality of service. It considered that the opening up of the ground-handling market would enable more effective liberalization of air transport as such. It is said that this directive was a compromise. There is a lot of interpretation going on, as it has been since the entering into force of the Ground Handling Directive in 1996. There were a number of decisions from the European Commission which were important, for instance, in relation to Frankfurt Airport, where Frankfurt Airport was forced to open up the ground-handling market. There are also a number of infringement procedures going on. The Commission launched an infringement procedure against Italy, another infringement procedure against Germany.

The Commission decided to have a report made by SH&E aviation consultants. They made a very extensive report, which they finalized in October 2002, and on the basis of that, the Commission now decided to launch a consultation procedure. A consultation paper of a few weeks ago requests the member states and the stakeholders to reply to a number of important issues in the ground-handling business. The Commission says that the Ground Handling Directive resulted in some increase of quality and some reduction of costs, but not enough that the liberalization of the ground-handling market should be continued, and that the market should gradually be opened up more. There are, however, a lot of issues, and the Commission certainly will take into account the opinions of stakeholders and the opinions of the member
states whose reply is expected by the first of June. Then we expect that they will be starting to work on the review of the Directive of 1996. [The European Commission, in the meantime, started to prepare a proposal for a revised version of the Ground Handling Directive; the opinions of the stakeholders were published on www.europa.eu.int.] This is a little bit to outline a little the legal framework in Europe.

Peter Bluth will compare with the U.S.; Peter was dealing with ground handling in the U.S. as well. I mentioned that the notion of independent ground handler was created in the 1980s-1990s, and I think Peter Bluth really is at the basis of the creation of the notion of the independent ground handler. He turned one of the ground-handling companies into a worldwide number one ground-handling group, now active at 200 airports in forty countries. Peter started his career with Lufthansa where he performed various functions. He has thirty-six years of experience now in the aviation industry. Peter began to deal with ground handling in 1983, starting from being involved in the negotiation of the ground-handling agreements for Lufthansa, and then further on he became responsible for the Lufthansa worldwide ground operation. In 1990, Lufthansa created its ground-handling subsidiary, at that moment called Lufthansa Airport Ground Services. It later became GlobeGround, and Peter participated in the building of the company into the global active ground-handling organization that it is today. GlobeGround was sold in the meantime to the French group Penauille, and at that moment, Peter became not only CEO of GlobeGround but also CEO of the related company, Servisair.

Peter Bluth: Thank you, Catherine, for the very kind introduction.

Ground Handling – It is a great honor for me to have been invited by the Dean Rusk Center and the University of Georgia and the Institute for European Studies to participate in this, for me, very valuable and interesting conference. Following the motto of this esteemed university, "to teach, to serve, and to inquire into the nature of things," it is a great pleasure for me to present to you and to discuss with you the role of airport service companies in the transatlantic relationship. In order to have ample time for discussion, I was asked to have the presentation only for ten, maximum fifteen minutes.
I shall briefly touch today's aviation situation with regard to airport service companies, then describe why ground handling is a growing market for service companies, and, finally, highlight the necessary requirements to the airport infrastructure. Some more detailed information is available in the conference pack.

Since September 11, and now even more with the Iraq war, you can read nearly every day in the newspapers about the dramatic situation of the aviation industry. The worldwide aviation industry lost in the last two years more money than it earned cumulatively in the last fifty-five years after the second world war. General economic downturn and fear of many passengers to travel in these times of potential further attacks lead to a dramatically falling demand of air travel. In addition, insurance and security costs went up substantially. Depending on how the crisis will develop, there is a permanent risk of rising fuel cost. As a consequence, airlines reduced dramatically their capacities, implemented severe job cuts, and are taking further cost reduction measures. Credit ratings for the airlines are deteriorating, which means that financing is becoming a most difficult task. Therefore, the airlines have to streamline their organization, concentrate on core business and may sell non-core activities. But besides this, we have to expect further airline bankruptcies and bailout schemes. The airline industry is now in a strong consolidation phase where only the fittest survive.

In principle the airport service companies are facing similar problems like the airlines. We have a downturn in air traffic volumes, we have the closure of certain airlines or bankruptcies, and some of the airlines are ceasing operation on certain routes. We have incredibly increased insurance costs, and like everybody else in the aviation sector, we have the difficulty in funding further investments. So, the same applies for the ground-handling companies. Capacity reduction, job cuts, cost-saving programs today are the main activities for ground handling and airport service companies. In addition to these cost-cutting measures, we have been requested by the airlines even to reduce further the prices, irrespective of the reduced business volumes they give to us. But in general, the airport service companies are more flexible to adjust costs than the airlines due to a much lower fixed-cost base. With the airlines' intention to concentrate on core activities, this creates new outsourcing business opportunities, especially for the financially strong airport service companies. The ground-handling industry as a volume-driven
business will consolidate further and can survive only if long-term reasonable margins can be achieved, like by-productivity improvement, some innovation, and network and volume expansion, as well as, in certain locations, price adjustments.

We think that airport service is a growing market, and we have four major growth factors. First, the long-term growth of the air transport industry, which all past crises have proven will continue. Experts, as we heard after the first dinner speech, are expecting, after the end of this downturn period, an average annual increase of air traffic by four to five percent. Second, ground-handling companies will benefit from the ongoing liberalization process. Outsourcing is another potential growth factor, and the globalization and consolidation trend among airport service companies, along with customers' changing requirements, will give global active companies further opportunity.

I would like to explore in more detail some of these growth aspects, coming first to liberalization. In Europe, historically, we had many airport monopolies, either by the local airport company or by the national carrier. With the implementation of the EU directive, the handling market was liberalized. For passenger and cargo handling, free market access was established, and for ramp handling, there were two ways of implementing the directive, either through a tender process or through a total opening of the market with free market access for each interested party. Anyhow, there is a set of problems handlers face when they enter a new market. Tender related problem areas are, What are relevant and objective selection criteria? All handling companies applying in a tender process usually have the same record. It is very difficult to select which is the right one for this place. How is the selection process organized to guarantee a fair choice? In many countries the implementation of the directive has been delayed without any consequences or only limited consequences from the Commission. High infrastructure costs are protecting the former monopolistic providers and limiting the liberalization benefits. We have problems related to appropriate airport infrastructure access to guarantee an efficient organization. Many of the independent handlers, whether successful or not in tenders, have the feeling that it is extremely difficult to find the real objective selection criteria. But even being successfully selected or having free market access, to start a new operation creates enormous problems like intensive price competition in order to gain a viable market share. High startup costs require strong financial
background and long-term vision. Customers are often reluctant to change to a new entrant without any proof of performance at that location. Long-term airline contracts with the existing providers prevent a short-term change of the service company. In many cases, the handlers also have to pay a concession fee to the airport, which amounts up to ten percent of the generated turnover. Overall, it can be stated that the implementation of the EU directive was helpful in the liberalization process but not totally satisfactory. Therefore the EU, as Catherine outlined, the European Commission works on a revision of this Directive to a more liberalized approach.

Looking at the U.S. airports, the handling situation here is completely different than in Europe. At nearly every airport in the U.S. we have free market access for service companies and either no or very little concession fees have to be paid. At U.S. airports, often terminal buildings are exclusively operated by hub carriers, where these airlines mostly do their own or sometimes also third-party handling. This leads practically to restricted market access of service companies. Handling of international carriers at U.S. airports is also, for the independent handlers, sometimes restricted due to limited Federal Inspection Services (FIS) facilities and also as a consequence of airline alliances. Therefore, the handling of these airlines often is done by the hub carrier in which terminal the international airline finally operates. Therefore, the total market share for handling companies is pretty low in the U.S., as most of the U.S. airlines are still doing substantial self and third-party handling at most of the airports where they operate.

Outsourcing is another major growth potential for service companies, and we believe especially a potential in the U.S. Increased competition through low-cost carriers and the general downturn in the aviation industry forces airlines to reduce internal and external costs by optimizing in-house processes and by outsourcing non-core activities, and ground handling may be one part of it. While passenger handling at hub airports is being seen as a core airline activity, all other handlings should be, could be outsourced. As most of the established U.S. carriers are still doing full handling at nearly every airport they serve, there is a big saving potential for airlines, as service companies can operate at lower cost and through cross-utilization with higher productivity. Of course it has to be mentioned that outsourcing needs proper arrangements with the respective unions in order to avoid a disruption of service.
Globalization is another growth factor and, academically speaking, there are three major forces which can be identified which are behind the increase of globalization in general. First, it is deregulation and liberalization, which is opening new markets. Second, technological changes, especially in the information technology (IT) sector, are prerequisite to establishing global companies to allow fast and efficient communication and product standardization. And third, customers are changing their expectations and requirements in order to benefit from global network. The ground-handling business as a commodity is a natural and suitable market for globalization. It is a growth market with an ongoing liberalization and deregulation trend. Customers are changing their requirements and expectation to globalized service networks and products, and increased price competition is supporting the globalization process in order to use synergies and to reduce production costs through standardization. The technical competence of handlers is essential to meet airline alliances' demands.

As indicated, airport service companies have certain requirements related to airports. In order to operate as productively as possible and to best serve our clients, the airlines, we are in favor of free market access policy, and we regard standardized minimum quality and safety regulations, which are essential, as part of the airport policy. Of course, we are not in favor of any royalties, but we accept cost-related charges for services provided by the airport company and we ask for reasonable access to airport infrastructure, which means adequate office space, sufficient and properly located equipment parking space to allow efficient operation, suitable IT infrastructure, and appropriate checking and baggage-handling facilities.

To summarize, the airport service business remains a long-term growth industry. Through outsourcing and liberalization, airport service companies will benefit, and the globalization and consolidation trend will continue. A strong transatlantic relationship is key for global success; therefore, my opinion is that this is the right conference to discuss future development. Thank you very much.

Catherine Erkelens: Thank you very much, Peter. I would like to launch some debate. Peter, you are saying that the U.S. ground-handling market is a free market. GlobeGround has activities in several airports, also in the U.S. You have seen all the difficulties with market access in Europe: With the
Ground Handling Directive, even though the market was opened up for a number of ground-handling activities, you still have four ground-handling activities which are very essential and which still can be restricted. You mentioned ramp handling, also baggage handling, fuel handling, freight handling, and mail handling still can be restricted in the EU member states. These activities can be restricted to not less than two ground handlers, and you mentioned indeed the issues with the tender procedures, the selection procedures. The Commission is asking a number of questions in relation to the objectivity and nondiscriminatory nature of selection procedures. My question is, is it easier to have market access in the U.S. than in Europe? Or, in other words, if you do not have the selection procedures for certain categories of ground handling, is it then easier to have real market access or do you have also problems of market access in the U.S.?

**Peter Bluth:** As indicated in some areas in the U.S., we have some slight problems to get market access; but I think this is not that problematic as in European airports. In principle, I am reasonably happy with the situation at the U.S. airports. I have done an analysis on the Amsterdam airport where we have free market access. Of course, it is easy to say free market access is fine, and it is a very long and sometimes difficult educational process for these airport service companies to find out if there is a market opportunity to use a free market access or not. I think this is a benefit of the present crisis that the service companies now have to recognize that they have to make profits long term, and they have to consider it very carefully if they enter a new market, and they have to calculate what are their costs to do it. In the past, we had sometimes some kind of monopoly games here. You are familiar with this game, where you think if I get a higher market share, if I reduce the prices, increase my market share, then the other party will withdraw from the market and then I can raise the prices. This kind of game, and this has been proven in the past, will not work. Therefore, it is very essential for the service companies, before they enter a new market, to be clear about the consequences and to see, is there enough potential under normal market conditions to do a viable business? We have done some studies, and we have the feeling that, depending on the size of the airport, two, three, maximum four handling companies are sufficient at an airport. If a service company decides to go to an airport, it has to see what is the available market. Usually you can withdraw the national carriers, which is about fifty percent of the market. Then the remaining fifty percent, you have to see how many other providers
are already in the market and how substantial is the business you can get. Take the example of Vienna airport where nearly eighty percent is business from the Star Alliance carriers, all handled by Vienna airport. A second license, even the remaining twenty percent – if you get 100 percent of the remaining market – even that is very difficult to have this as a viable business. So, you have to calculate very carefully and to see if it is right to do an investment into the sector. I think that, following these principles and the normal economic principles, free market access, in a regulated framework for operating at an airport – that has to be given – would be avoiding all the other problems which are still related to the tenders, which I have found out.

**Catherine Erkelens:** Thank you Peter. So, do you say it is the issue of the contestable market? You have it in the U.S., but you have it in Europe also, notwithstanding the selection procedures?

**Pierre Klees:** We just discussed this question two days ago in Airport Council International Europe, because we obviously were questioned by European Commission about this consultation you just mentioned. I think that we will say as an airport that the major point for us is the quality and we are not sure the reduced cost implies improved quality. Naturally is just the opposite. And it is very difficult to obtain that the service level agreements in the contract with the handlers have some sanctions if the quality is not achieved, because the problem is that when it is bad quality in assistance, finally it is the image of the airport, not that of the ground handler, that is at stake. And we will insist upon finding a way that the quality be a part of the contract. For us it obviously is more important than reduced cost. This is number one.

The airport has a responsibility for the space arrangement. We should not have too many ground handlers, depending on the space available. You mentioned two or three, maybe four; I think that's a right number. In Brussels Airport, we have two. We suffered in the past from one, but finally the liberalization supplied more in Brussels only two years ago. Before that, it was a monopoly from Sabena, which had eighty-five percent of the market. And then, I disagree that you do not want royalties. Obviously that is the position of the airports. But when you looked at the list of what you need, and I agree that the list is perfectly right, it is abnormal that this be supplied without a profit. You want profit when you are a handler, it is normal; but the
airport should also make a profit. We are not assisted by the state, in our case for many years, since 1987, and I do not see why we should not have a royalty. Ten percent: I would be delighted if I had ten percent. For the moment I have 3.5 percent, which is a big difference. That is my major comment for the moment, Ms. Chairman.

Catherine Erkelens: It may be important to mention that the issue of the royalty, which is also called the access fee or the ground-handling fee, is pending before the Court of Justice. [In the meantime, the judgment of the Court of Justice was rendered: ECJ 16 October 2003, Case C-363/01.] There is a preliminary ruling, which is pending, that was launched by Lufthansa on the interpretation of the ground-handling fee. In the report of the Advocate General it was said that the ground-handling fee, meaning a fee or a royalty to be paid just to have the possibility to be able to effectuate the ground-handling activity, would be contrary to the Ground Handling Directive and the EC treaty. However, Article 16 of the Ground Handling Directive allows the airport to ask for payment for the use of the airport infrastructure. So if it is for the use of the airport infrastructure, an airport indeed is allowed to ask for payment. The problems of the airports surely are real; however, there also is an issue of competition law, an issue of objective, nondiscriminatory possibilities for the several ground handlers. Maybe Mario Diaz wants to react to that.

Mario C. Diaz: Let me take a step back. At U.S. airports, and I believe under bilateral agreements, airlines have the inherent right to self-handle. Clearly, domestic carriers have the right to self-handle. I think having said that we now next have to take a look at the agreements or the structure of the agreements that U.S. carriers have with U.S. airports. Those are proprietary, exclusive agreements that basically have tied up a lot of the assets, a lot of the gates, a lot of the facilities at the airports. This, then, leads to the ability of airlines either to muscle out or to have more of a say as to how business is conducted on their gates, either under sublease agreements or under handling agreements. In the United States, and certainly at Hartsfield, we are moving away from those proprietary agreements toward more common use.

Now, to get to the issue of the fee itself. The proposition in the United States, and at Hartsfield specifically, is not so much that we would charge a fee to all carriers for ground handling per se, but we believe in the principle
that if a company operates on an airport and derives economic value from the activity conducted on the airport, unrelated to its principal purpose of conducting air traffic at that airport, that the airports share somewhat in that economic activity. If, let's say, a Delta Air Lines at the airport wants to ground handle itself, that is not a problem; but if a Delta Air Line decides to get into the ground-handling business, or if other companies come in – we have many ground-handling companies that come in and do business on the airport – the airport then does believe that if we do not derive benefit from the economic activity conducted on that airport, then we are losing. We have to provide the infrastructure, that infrastructure has to be paid for, and we have operating costs that have to be paid for. We believe that if there is economic activity conducted for the benefit of some entity, some company, then the airport is entitled to some fee, whether it is five percent, three percent, ten percent, it is left to negotiations.

Robert Cohn: Catherine, I would like to comment on what Professor Klees observed as the underlying need for, I guess, the regulatory framework. When I was listening to him, it was reminiscent of all the arguments we used to hear pre-1978 about the importance of retaining regulation of the airlines to avoid destructive competition and to maintain the quality of airline service. I think, if you have a belief in the competitive marketplace and the disciplining of competitive marketplace behavior that will produce the quality of service that is necessary, then you really do not need a regulated regime. If, in fact, the quality of a particular ground-handling service was so poor that the airline that is using that service provider, through agreements, sanctions, or just simply termination of agreement, will find a replacement that will provide a higher quality. So, my own view is I do not think this is a role for airports; it is a role for the airline providers.

Catherine Erkelens: The European Commission indeed is asking a number of questions on all these issues, also on centralized airport infrastructure: How should it be defined and how in relation to that can the access fee be defined?

I have one last question. The European Commission is asking whether the selection procedures and the criteria for the selection procedures in Europe should be reviewed. The question is what is the stakeholder's opinion on the situation where the possibility to start ground handling would be offered to the
highest bidder, with reference to what is happening in the telecommunications sector for instance? So, I would like to have the reactions on this proposal or this question concerning "the ground-handling market is for the highest bidder."

Peter Bluth: Very interesting question. I would have a pragmatic view on this. For me, being in a ground-handling company, it is a pure commercial decision. I would not be against it. It could be a more objective selection criterion than anything else what we are seeing right now. Then each individual handling company has to decide What is the business worth at that specific location and when do I get the proper returns and what investment could I make on this in order to get this license? Therefore, in principle, I do not have a problem. A difficulty will be with some of the players in a market, if their rationale, making proper investment decisions, is the right thing. But, as I said earlier, I believe long term the trend shows which is the right way to go.

Catherine Erkelens: The question is also, to where does the money go in that case? Professor Klees, do you have a reaction to that?

Pierre Klees: I think, as was said by Mr. Diaz, it is a commercial business, and we airports also are in a commercial business. I think the best bid for the airport is the one with the quality and the price, call it a royalty or call it a part of the profit, is not the thinking from 1978? I think the danger is that some ground handlers are coming back to a monopoly themselves. So I do believe that this business clearly should be regulated as any other business. If you do not do that, likely liberalization will contract to just the opposite, which is a new monopoly. I do believe that the highest bidder for an airport is a good solution; no problem about that. The first thing to think about is, as an airport we do believe that assistance to the passenger is not inner-core business. Therefore, we should not do it; we never did it, and we think about it, we have the strategy not to go into that business, it is not ours, it is business from the ground handler. Liberalization is okay. That is good, basically, provided it is regulated and provided they pay what they should pay to use an infrastructure that costs a lot of money and that has to be financed by the users.
Catherine Erkelens: Any reaction from the audience? Frederik Sørensen, I saw that you reacted.

Frederik Sørensen: I am amazed by this discussion I'll have to say, because you take as a given that there will be some selection procedure, and actually under the directive, the situation is that the market access is open, and one can then decide to limit the number of contractors. But I just wonder, and I think Mr. Bluth, in fact, was saying that if there is free market access, the airport then says, We need to have ground handling available through all the hours where the airport is open, so any candidate who comes must offer services during the total opening hours of the airport and maybe some other criteria of quality. If that is put down by the airport, is it necessary then to have a selection procedure? Will there be more ground handlers than two, three, maybe four. The market will regulate the number of handlers which can provide the services throughout the total time of opening.

Catherine Erkelens: Which is the situation in the U.S.

Frederik Sørensen: Yes. I don't think it is necessary. It is an unneeded difficulty which has been introduced in Europe.

Catherine Erkelens: Any other reactions? Nobody? We can close the subject of ground handling then.

We will now be talking about financing. Bob Cohn will deal with the financing of airports in the U.S. Bob is a law practitioner. He chairs the transportation practice group of Shaw Pittman. His practice is aeronautical and aviation law, which includes federal, state, international regulatory matters, commercial transactions, mergers and acquisitions, antitrust counseling, enforcement matters, bankruptcy, and litigation. He has acted before various agencies of the federal government, federal courts, Congress, and various governmental agencies and courts. Mr. Cohn's clients include major U.S. airlines, but also other airlines, municipalities, airports, industry, trade associations, travel agents, aviation technology companies.

Robert Cohn: Thank you, Catherine. I do have a varied practice representing both airport and airlines. My airline clients run the gamut of the industry from Delta to Chautauqua to Hooters Air, and Hooters brings with it, as somebody
mentioned yesterday, the issue of insanity either in buying restaurants or airlines. They have combined it in one entity. I also represent major airports, so I have involved on both the regulatory and the business side in many perspectives including the airport perspective.

I want to focus on airport capacity issues, because that is really essential to the discussion over this weekend of clearing the way for more open markets. You can have as many route rights and access capabilities, but without having the airport infrastructure – not only the hard assets, but I also am talking about issues like slots and how to deal with congestion and policies relating to those – without that you really do not have a free market. Francis Ford Coppola actually coined the term that best describes the conditions that we are all facing in the industry today which is *apocalypse now*. I think we talked about that yesterday. And the September 11 events, the SARS events, the war on Iraq have really diverted attention from the critical importance of airport capacity, because the industry is contracted, downsized, and focusing on security. And, of course, the biggest reductions have been across the Atlantic. Delta recently announced that JFK alone is in double-digit decline in the services they were providing, that they began to build in 1991 when they took over the PanAm routes. It is sort of sad to see that happen, but it is a part of this vital process that all of the airlines are engaged in right now. We really cannot ignore history, and the history before 2001 was that the airline system was bursting at the seams, experienced chronic delays and congestion throughout all major airports. The General Accounting Office reported in 2000, and that was the year that delays hit their peak, that aviation commercial delays cost the economy over nine billion dollars in lost economic impact, which is just huge. The economic impact on the airlines due to the congestion was over three billion dollars. In 2000, in round numbers, there were some 650 million passengers enplaning, and it was projected that by 2010 there would be over a billion. There was not enough airport capacity in 2000 to handle the 610 million, how were they going to handle the one billion? Unfortunately, that dilemma has eased substantially due to the economic impacts, the decline that hit well before September 11, then the events of September 11, and now the war, etcetera. Hundreds of aircraft have been grounded. In fact, there are more airplanes in the Mojavi Desert than there are at Chicago O'Hare on a Friday night, which is kind of a spectacular statistic. There are, worldwide, 1800 large airplanes that are on the ground, which is just phenomenal. Hundreds of thousands of employees worldwide have been
laid off. Nevertheless, this too shall pass. The war will be over, the economy will improve in the U.S. and globally, and the industry will emerge, it will be restructured, we all presume. How, we do not know, but it is going to happen. Tim Meskill's presentation Thursday night I thought was quite instructive in terms of the growth pattern that Boeing envisioned, and it still sees a growth pattern, so let us all hope he is right that that's going to happen.

It is now estimated that the traffic will hit one billion in 2014 instead of 2010, so it basically is a four-year delay. But it is going to happen, and unfortunately, the history of developing airport capacity is pretty dismal, certainly in this country with which I am familiar. Since 1970, there have been only two new airports in this country, Dallas-Fort Worth and Denver. It takes over a decade for a new runway to be completed in this country and that is through the regulatory environmental review process. One of my clients, the City of San Jose Norman Y. Mineta International Airport, took over eleven years to get their master plan approved due to the environmental objections that they faced. This year, we are happy to see the results of prior efforts. Four new runways that are going to be operational: Miami, Denver, Orlando, and Houston. But it is really not enough. Many ask how we are going to get from here to there when the projection is we are going to need fifty miles of new runways in order to handle the one billion passengers that are expected in another ten years.

I want to describe briefly how airports get their funds for capital development and then talk about some proposals to change the paradigms for airport development. Virtually all airports in the United States, with some very few and small exceptions, are owned by municipalities. They are state-owned, they are city-owned, they are county-owned. There are 19,000 airports by the way in the United States; that includes public and private airports. There are over 5300 public airports, 3300 of which are on what is called the NPIAS, which is the National Plan for Integrated Airport System, and those 3300 airports are eligible for federal grants; 437 of those are primary airports, which means they generate more than 10,000 passengers a year.

And so, where do these airports get their monies? Well, they get their monies first from rates and charges, and in this country, rates and charges are fairly tightly regulated by the U.S. Federal Aviation Administration (FAA),
based upon airports receiving money. So if you receive a grant from the FAA, you have to provide rates and charges that are fair, reasonable, and not unjustly discriminatory. The FAA has issued a policy on rates and charges, where airfield, that means the taxiways and the runways, can only recoup historical costs. There are other restrictions that are complicated for us to get into here. When Los Angeles tried to reap a market cost for its airport in which it actually wanted to try to take money off the airport to fund who knows what – police, schools, or whatever – which is a driving force for many political entities by the way, the FAA nailed them pretty hard on that. It was a very complicated, long administrative procedure where the FAA said, no, you can't do that. So it is a tightly-regulated system, because essentially, and Mario Diaz may disagree with this, but essentially airports are monopolies, and so when you have a monopoly, you have to keep a lid on pricing. There is really nowhere else for Delta to go in Atlanta, if it wants to serve Atlanta, than Hartsfield, and so on. So airport fees and charges is one.

Airport bonds are another financing mechanism for municipal entities. They have tax-exempt status and they are able to get bonds based upon that tax-exempt status supported by the streams of revenue that they get from rates and charges, from PFCs, passenger facility charges – we'll talk about in a little bit – so that helps to underwrite substantially airport capacity.

There also are direct airport grants from the FAA. Then finally you have a passenger facility charge which is, in some respects, viewed as one of the many taxes that are imposed on consumers.

On the airport grant system, in 1970 Congress established what is known as the Airport and Airway Trust Fund – I love the word trust; I'll talk about that in a minute – for improvements in aviation infrastructure. Everybody who has flown here in the United States knows that they pay many taxes, among which is 7.5 percent of every ticket which goes into this aviation trust fund. That fund is really a misnomer; it is really not a trust. It should be but it is not; it is anything but. The monies were supposed to be earmarked expressly for airport development and used for that purpose, but it is part of the unified U.S. government budget. So when it gets caught in the budget – Charlie, you have been there, you know about it. The successive administrations – and that's really Congress, I can't blame Charlie for that – refused to spend the money because they had to play games by taking this giant trust
fund and camouflaging deficits or spending money elsewhere for other programs, like highways in Pennsylvania or something. So as a result, there has been chronic underfunding of airport development. In fact, the trust fund surplus in 1991 reached a peak of 7.7 billion dollars just sitting there unspent, while the rest of the system basically deteriorated. Imagine if that money was spent in 1991 where the system would be in 2001 in terms of capacity; but it wasn't to be. And, there have been efforts year-in and year-out to get the trust fund, so-called, off budget, and those efforts consistently fail because Congress wants to play games. But in 1999 Congress enacted a landmark legislation, called Air-21. Through some complicated legislative devices, the law really helped to ensure now that every dollar that is earned in the trust fund gets spent on aviation programs. I will talk a little bit about this later. Air-21 also deregulated the slot-controlled airports in the United States over a transitional period so that by 2007, LaGuardia and O'Hare and others will be completely deregulated from slot controls. The single exception was Washington National Airport. So, as a result of Air-21, the surplus was reduced from nine billion to 4.8 billion and it is going down.

From that trust fund, the FAA gives entitlement grants. Every airport gets money that it is entitled to based upon the number of passengers enplaned. Then there is this discretionary pool of dollars that the FAA doles out year-in and year-out with many, many congressionally-mandated set-asides, so it is not all spent for discretion. There are noise set-asides, reliever airports, etcetera. In addition to these grants, Congress authorized airports to collect additional fees called passenger facility charges (PFCs). They range from three dollars to $4.50 per ticket. There are caps; I think it is eighteen bucks per round trip. So that is another element of the taxes that are imposed. The airlines hate PFCs by the way. They view it as just one more tax that they have to eat, and they assert they are, and probably are, the most taxed industry in the United States. We have heard that in a previous presentation. The PFCs can be viewed as essentially the equivalent of a toll road for every airport. Imagine having to pay a toll for every highway you are on throughout the country. Well, PFCs, in some ways, can be viewed as a toll. The airports love it. It is a relatively easy way to generate lots of money for the traveling public for airport development. Since the enactment, thirty-seven billion dollars in PFCs have been collected. Last year alone, the PFCs totaled two billion dollars.
Let's put this all in context: You need fifty more miles of runways. The airport association has said that the annual requirement for capital development (not including security in addition to all the post September 11) is fifteen billion dollars a year to keep up with airport capital development in this country. So you have three billion basically annually in airport improvement program grants, and you have two billion in PFCs. It is not enough. What's going to happen?

Well, the U.S. Government basically is tapped out. I mean, let's face it folks, with the war and everything else, the pressure to increase the three billion, even if it was successful, to four billion, which is still not enough, is not going to happen. There will be a major battle to increase PFCs, and the airports would love the PFCs cap to be eliminated. That probably is not going to happen. The airlines are going to oppose that. Bonding capabilities of municipalities are eroded because everybody is now feeling the horrible pain of the economic impact. It is more difficult to get bonds. Streams of revenues are not as big as they were. Airports are unable to charge more rates and charges because it is regulated (a), and (b) the airlines are trying to cut costs; not increase costs, so that's tough.

There really needs to be new paradigm to be considered, and also I think the whole airport development process of building needs to evaluate where the industry will be in the next five years. I do not think anybody here can actually predict where it will be. Hub-and-spoke-systems network carriers are certainly going to be here to stay, but in quite the same form that they are today? I don't know, I don't think so. You have American de-peaking, the so-called, *rolling hub*, meaning they basically are having fewer banks come in and go out. Delta has announced this new low-fare airline called Song that begins in mid-April, and that is an attempt to try to develop a low cost alternative to the JetBlue's and AirTrans's, etcetera, and so that is more point to point. United announced that a substantial amount of its new capacity is going to be in a low fare, point-to-point operation. So, you know, the issue, and it is one that I am sure is quite challenging to Mario and others at Hartsfield and other hub airports, is what is the hub going to look like? I think there needs to be a creative solution.

One of things that I have been working on for another client, which is quite prevalent internationally in Latin America and places in Europe, is
private airport development. It has been something that U.S. government, U.S. airports have been loathe to consider which is privatization or bringing in private equity. It has been a slow process in terms of having public private partnerships.

One of the more challenging projects I am working on is the development of a south suburban airport in Chicago, Illinois, called Peotone. The communities around there actually found developers that are extremely interested because they see a gigantic demand. In a sense, they see sort of the equivalent of Dulles Airport, because both Midway and O'Hare are essentially capitiated-out, there is a gigantic demand, and they have private developers who are willing to do it. Private development has taken hold. The international terminal facility at JFK, a 1.6 billion dollar terminal, is developed in a public private partnership with the Port Authority of New York and New Jersey, a place from which Mario came before he joined Atlanta, and a private developer group headed by a company called LCOR. LCOR is one of those developers that is looking to develop the Peotone Airport. You have Sidney Airport, you have Vancouver airport, Malta airport, Athens airport. There is a brand new airport outside Paris called Valtri, which essentially is a cargo airport, all privately developed. There are scores of them in Latin America, and it seems to me, if we believe in the free market enterprise, if we believe in private capital, that is the way to go. And there are ways to do it. Alliance Airport in Texas, for example, was developed by the Perots, basically as a cargo service. They didn't make their money at the airport; they made their money in the land surrounding the airport, because the airport is a magnet for economic development. I happen to live in Fairfax County so I am quite familiar with what is going on there. The Fairfax County representative who spoke yesterday explained that the Dulles corridor is one of the most powerful technology and business centers in the United States of America, and it is all related to, I believe, air transportation. It is all related to the growth and development of Dulles and National Airport, and so people can make a lot of money in terms of airport development. Entrepreneurial efforts can build things cheaper and more efficiently. That is a huge policy issue. Charlie, I don't know whether, when you were Assistant Secretary, the issue of privatization came up there. Lots of people are opposed to it because they are anxious that it is only going to result in increased rates and charges for airlines. But some will say that they can operate airports more efficiently than the sort of monopolistic government agencies that run it. In fact, by bringing
in efficiencies, you reduce cost and, therefore, can pass those on to the users of the airport. So I think we ought to be focusing on private development of airports in the future. One of the things I believe hinders private development is the easy money that is available through the government subsidies, whether it's the AIP grants or PFCs. I think it makes it much more difficult for the free enterprise system to take hold in the U.S. airport development as it may take hold elsewhere.

The other constraint on airport capacity is regulatory constraints. Those are, in my view, the issues relating to slots, both internationally and here in the United States. The interesting thing is, when Air-21 passed, I think was in April 2000, Congress said, "We are going to deregulate the slot-controlled airports, but in the meantime we are going to let regional jets operate without control, and we are going to let new entrants operate new services up to a cap of twenty flights per day." I think a lot of the airlines didn't believe that the slot controls were gone for good, and so when you opened up the cookie jar, they started gobbling the cookies until they got sick. And where they got sick the worst was at LaGuardia Airport, because they really increased service a tremendous amount; and the Port Authority of New York and New Jersey, two-fisted regulators they are, they were going to impose their own slot controls and put a lot of pressure on the DOT and the FAA to deal with the short-term congestion issue. So, what the FAA did is impose a new layer of slots; they called it a lottery, and they basically capped it at that level. So, Congress deregulated, the FAA regulated. In my view that was a no-no, because I think that if you believe in the competitive marketplace, there may be some short-term disruptions but folks, the airlines do not want congestion, the airlines don't want their flights delayed, and sooner or later you get rational scheduling, even though during a short term, there may be some difficulty. So what happened now is the FAA and the DOT have instituted these rule makings for so-called demand management, because they now foresee somewhat the delay that airports throughout the company are going to achieve, getting back to congestion. So, we think there ought to be some demand management. Part of that demand management is to establish caps on service and to have the airlines pay peak pricing, in other words, pay for services. Well, where does the money go? The money goes to the airports, good ole' monopolists down there. So the airlines have to, once again, go into their pockets to pay for airline services.
I just do not believe that that is something that ought to be done. I think government should not take actions to restrict demand, it ought to increase infrastructure. There are lots of technologies that can be developed through the GPS systems, etcetera, and the FAA is actually working on that. So, I think that the approach of demand management is wrong. Congress wisely deregulated the industry in 1978. That made for some tremendous successes and failures. I happened to have the benefit of representing one of those early successes and failures, People Express Air Lines. I was their general counsel, and that was a roller coaster ride, but that made possible the JetBlues and the expansion of Southwest and AirTrans. And restricting demand is very wrong. Just as when we talk internationally – and I mentioned this with Paul Jasinski yesterday in our little colloquy about London Heathrow – the issue with London Heathrow is that American and British Airways, the two dominant carriers between the United States, wanted to effectively merge through an antitrust immunized alliance, but as a condition to curing the competitive problems, they did not want to give up slots. So they would merge, and carriers like Delta (or Continental), which does not have authority to serve London Heathrow, would simply be frozen out. That has been one of the key issues, and it seems to me that it would be wise if slot controls throughout the world, not just here in the United States, were deregulated and let the marketplace discipline behavior. The challenge is to begin these processes now. I hope I have put on the table a few provocative proposals. Thank you.

Catherine Erkelens: Thank you very much, Bob, for this interesting presentation. I am sure there are plenty of reactions and questions, but maybe I would like to have the reactions from the airports first and then start the debate. So now we will have the presentation of Mr. Pierre Klees, CEO of Brussels International Airport Company (BIAC). Pierre Klees is a very important person on the business scene in Belgium. He is also the president of the board of directors of the Post Offices. Professor Klees teaches at The Free University of Brussels, the French University. BIAC before was called BATC, Brussels Airport Terminal Company. BATC was in charge of management of the passenger building only, and then a few years ago took over the management of the whole airport, taking over the competencies of Régies des Voies Aériennes, which became Belgocontrol and which is now in charge only of air traffic management. Pierre Klees was put in charge of the management of the whole Brussels airport at the moment of transition, which is a very difficult period for the Brussels airport.
Pierre Klees: Thank you. The first thing I should say, to raise the debate with my friend on slots problem is that I think the slots should be owned by the airport. At least it should be run by independent bodies. In Belgium, until the bankruptcy of Sabena the home carrier, it was coordinated by Sabena itself and that is absolutely incredible. Now it is an independent slot coordination body. Independent is a little bit difficult, because when you say independent it is probably nominated by the state, and when you have a body nominated by the state, is that an independent body? That is another question I raise. So, just a remark to start with.

We had a peculiar situation in Belgium. In 1987, as you said, they debudgetized the state. Until that time, financing of airport facilities was state-financed operations. From 1958, where we had in Europe probably one of the most beautiful airports, to 1987, almost nothing was done by the state, and we were becoming the Jurassic Park of the airports in Europe. At least that was the name that the Swiss people, Swissair, gave of the airport at the time they came to take over Sabena and to send them to bankruptcy five years later. That is true. That's just a reality. So Brussels Airport Terminal Company (BATC) was created to build a new terminal and a new concourse, and the budget at that time was allowed by the Ministry at seven billion Belgian francs (you will calculate that into dollars, obviously). And in 1993, when I was requested to take over BATC, the budget and the money spent was around twenty-one billion, so is the peak law by McNamara. You know that when Mr. McNamara had the budget presented by the Army, he multiplied that in his agenda by 3.1416 ($\pi$) in order to have what will be the probable cost of the project. In Belgium, almost all big projects, and the airport extension was the largest of the previous century, have followed the law McNamara precisely. So we started the project, and we finally had on the same airport a public body, as you mentioned, Régie des Voies Aériennes (RVA), and a private body, Brussels Airport Terminal Company: forty-five percent state, fifty-five percent private industry. By the way, it was not an industry, it was an institution—essentially the banking and the insurance companies—so there was no professional of the industry and surely not of the airport industry. That was a weakness. Then it was not impossible but difficult to run this airport with one body for the land-side operation and another one for the air-side operation. It is an exception in all. So finally one minister was smart enough to say we should merge the two, and we became then BIAC in 1993, where the state owns sixty-five percent of the shares.
because of what it gives, the runways and all the air-side activities, except the land. At the time, we were an airport authority without owning its own land. It is only in Belgium that you can see things like that, but it is changed now. We paid for the land, and thirty-five percent of our shares were owned by private companies. It was set by law that this operation, without any subsidy from the states, will be managed commercially and industrially, and management will come from the private sector, which is the case.

Now we are on the verge of making it completely legally private, without changing the ownership. You may have a private company with a majority of the shares owned by the state. That is possible, because we do not see too much what is the importance from ownership, provided we know that we will have no subsidy whatsoever in any specified areas of the operation. From that time on, we continued to expand it. The crisis we have right now is especially dramatic for Belgium because the Brussels airport saw two of its home carriers, Sabena and City Bird, go to bankruptcy at the same time in 2001. It was really a black year after September 11, then the economy crisis, then the two major home carriers disappearing. Fifty-eight percent of the volume does not disappear because nature has hated the void, so Lufthansa, British Airways, and other companies picked up a portion; but the end result is that 2000 was the record year with twenty-two million pax and 700 metric tons of freight without trucking. We have both pax and freight, and we are open at night, twenty-four hours, although we have a green minister of transport (ecologist). That may be the largest success we have, with a green minister in Belgium, to be open all night; that's good. We have recipes we will give without any royalties if some of your airports have a problem with that. Finally, the end result is that we are now at fifteen million pax instead of twenty-two years ago. That is because the hub system established by Sabena almost disappeared. Where we are suffering right now is the intercontinental connection with southern United States. The only network we have rebuilt, with a new company called SN Airlines, is to Africa, although we have a big fight with Air France on this market.

The final situation is that we still are making money by taking the royalties of the ground handlers. You will see that all detailed in the paper which I hope will be distributed; but the point is, we obviously now have an excess of capacity. Our layout is selected after many discussions with Groiner. From Y concourses, we adopted finally parallel concourses, and one
single terminal, a possible extension, but we do not feel that we need to go to more than one terminal with connection between terminals. We are a small airport, twenty million passengers. The capacity installed right now is able to handle thirty million pax. We have three runways. These runways were built by the German army during the Second World War. At the time, we had exactly the same runway capacity as Heathrow, and had five million passengers when Heathrow already had thirty million passengers. You understand that it is creating a financial situation very detrimental for the airport economics. So now we are fifteen million passengers, but we can grow. You may not have a mission statement without a vision statement. What is our vision statement? I fully agree with what was said previously, we are sure that after the geo-politic situation, if the new companies succeed in Belgium, we will grow again. We have indicated that in 2005, we will be fifteen million, and in 2025, we will be thirty million pax. That means that until that time, we will not invest more in increasing the present infrastructure.

How did we get the financing then? With private money. We went to the bank consortium. In 2002 we have a nice commercial paper program. I do not understand why, but people are investing in that kind of thing and in airports. We also lease across borders equipment for the baggage-handling system with an institution in the United States of America. Therefore, we do believe we will be private next year, with the new government, depending on the results of the election. We do believe that airports should be more privatized. Obviously, again, when you have a liberalization somewhere, you must have a regulation. If you do not do that, you will create a new monopoly situation. Our regulation is made by a body called L'Administration de L'Aéronautique, in Belgium, and we do have a management contract with the state which stimulates all the obligation we have for quality, for development, and especially for fees. We are based on a dual till operation. That means that the commercial operation, which is fully independent of the management contract and of any regulation except the commercial regulation applied for all the country, presently is subsidizing (60/40) the airport activities. The aviation affairs are supported by the non-aviation affairs. That is the reason why I feel that the airlines should pay what they have to pay to get the utilities they use. We have decided to accommodate full-service airline companies as low-cost companies. We have one low-cost, Virgin Express, and I can assure you that they are looking to the fees very, very seriously. The management contract impels us to be competitive with the airports around us, that is,
Frankfurt airport, Charles de Gaulle, Heathrow, and Schiphol. The major competition comes from the regional airports and from these big airports around us with the high-speed train. I do believe that, at least in Europe, this business is now a competitive business, is no longer too much monopoly business. You may get from Brussels to any of the big airports I mentioned to you in less than two hours. Therefore, the competition between airports is very serious. It is impossible for us to beat these big airports. We were number ten in Europe. In freight we are number five, but there is a huge difference between a fourth and fifth, some million tons of freight. But, anyhow, the rule is, if you cannot beat them, join them, and we are now looking at which kind of rare associations we can make between airports, especially for the network of delivery in Europe and overseas. That basically is what I have to say for the situation of Belgium. I do not think you can have general rules in Europe in any of these subjects you discussed here. Every country wants to make its own approach, and the European Commission has not yet succeeded in making it very unified, although the legal people believe that, but on the field that is not what happened. Thank you.

Catherine Erkelens: Thank you very much, Mr. Klees. We will now go over to Mr. Diaz before asking questions, because I think that there are a number of questions as well.

Mario Diaz is Deputy General Manager of Hartsfield Atlanta International Airport since January 1999. He is responsible for operations, business, finance, and capital development. He is also responsible for the Hartsfield development program called Focus on the Future. Maria Diaz, before that, was working for New Jersey Airports where he was in charge of business and needs negotiations.

Mario Diaz: Thank you and good morning. As you probably know, I am standing in this morning or sitting in this morning, as the case may be, for David Plavin, who is the president of Airports Council International. If David were here, he would speak to you about infrastructure needs for airports nationwide. I clearly do not bring that perspective to you this morning, but I do bring to you the perspective of the airport owner-operator, not just any airport owner-operator, the airport owner-operator of the busiest airport in the world, Hartsfield Atlanta International. In the year 2000, Hartsfield handled over eighty million passengers, and in light of the calamity that has befallen
the airline industry, it continues to lead in passenger traffic. Before I get into the infrastructure needs of the airport, however, I thought it would be worthwhile to talk for a minute about the importance of continuing to preserve and continuing to invest in Hartsfield Airport and the reasons for it, and, by extension, the reasons for other municipalities, counties, and state, and local political bodies to continue to invest in their airports. In a word, it is development. Hartsfield generates over eighteen billion dollars of gross economic revenue for the region. By that, we simply mean the expenditure of visitors, passengers that visit the region and spend on everything from cab fares to hotels to meals to entertainment to golf fees, all of those expenditures that visitors make when they visit a region, especially a city like Atlanta that is a conference-based city. Hartsfield is also responsible for over 650,000 jobs in the region, something that is very important to note, of importance to the governing bodies as it is also a sign of economic development, and of importance directly at the airport. Hartsfield employs over 55,000; that is inclusive of the personnel hired directly by the airlines.

Clearly we are operating in a new environment today. As we think about infrastructure needs, we must be mindful about the changes that have taken place. Particularly, a lot of people like to talk about the movie of The Perfect Storm and about the factors that came together to wreak havoc on the fishing trawlers. Well, I think that that is a perfect analogy to what has happened in the airline industry, although I would add that there are many, many more factors that have come together. Robert has touched on some of those. We started the new millennium with the economy going south, starting to sour. We then saw the terrorist cell attacks on September 11, 2001, and the precipitous drop in traffic in the wake of that event. We then talk about the creation of the federal bureaucracy infrastructure that essentially has put in place very new, very restrictive regulations with respect to passenger and baggage screening that has created a very, very substantial hassle factor, as we like to speak about it, and has, in itself, had a dampening effect on traffic. And then we talk about the war in Iraq and then SARS (severe acute respiratory syndrome), all of these things coming together sequentially, one right on top of another. That has provided for some serious unprecedented impacts on an industry that is really reeling. What are the effects? Well, we know today that United Air Lines is in bankruptcy. There is talk about United not emerging. I personally do not hold that position. I do think that United will emerge. U.S. Airways was the first in; they are now out: a new improved
U.S. Airways, low cost, thin, ready to fight again and be competitive. But we have lost others, smaller, MetroJet, Midway. On the international front, we lost Swissair, for a while we lost KLM. We lost Korean as they retrenched. Both Korean and KLM are back. And so, it is an environment that we do need to be mindful of.

I had a chart that showed the decrease in both frequencies and seats and the impact of the events of September 11 on the airport industry. I would just point out that in some cases the dramatic numbers are real and in others they are of less importance. For instance, JFK shows the significant drop in frequencies or operations but a very small drop in seats; and that is because J.F. Kennedy, as we all know, is what we call a heavy metal airport. It is just very group-4, group-5 intensive, and I suspect that the drop off in operations there has more to do with those little regional or commuter jets that simply went away. So, in the wake of September 11, we are in the process of mounting a $5.4 billion capital program that I will get to in a second, but we have contract intensive investment at Hartsfield Airport. I thought about how to explain this; I was surfing on the web one day and came across an interesting chart on the Standard & Poor's site (see figure 1). It showed the Standard & Poor's 500 Index from about 1940 right through the present day, and it generally was a trend moving up except when there were recessions, when there was war, when there were other calamities that befall the economy of the United States; but overall, it was a trend that had a very positive slope. And so I thought to myself, well I wonder what that same chart would look like for passenger traffic at Hartsfield (see figure 2). It is almost identical to the Standard & Poor's 500 Index chart. We included the Iraq invasion, the hostage taking, and all the way back to the Cuban missile crisis. There are dips, but, generally speaking, the trend of the graph is positive. So we believe that -- two things -- first, to be involved in the airline industry and the airport industry, you just must be an eternal optimist, and to stay in this industry, but second, we believe that the reason that the airline industry will rebound is because it is inexplicably linked to the economy of the United States, unlike Europe that has a highly developed rail system, as Klees pointed out. The United States does not. Further, the geography of the United States is so much greater, grander than is Europe and other parts of the world that we rely more heavily on air transportation, and as goes the economy, so goes the airline industry in the United States. We believe there will come a point when we
will get back to the chorus of voices calling for less congestion and more runways.

Hartsfield is pretty well positioned to continue to mount that economic activity or capital investment. Just to give you a couple of facts: In the wake of September 11, Hartsfield traffic fell off about thirty percent in October and November. In December we already were back up to about fifteen percent loss. For the year 2001, over 2000, we were down roughly about six percent. In 2002 over 2001, we are actually +1.34 percent, where all of our other major centers – I don't call them competitors, because I don't really believe Los Angeles is really a competitor to Hartsfield – in the United States had significant losses. So we, therefore, are faced with the prospect of looking at this as a time to put your head in the sand or of looking at it as an opportunity for some relief and a calm in the storm, to take advantage of putting some infrastructure in place. We have some significant infrastructure needs, most important of which is a fifth runway. The fifth runway at Hartsfield is the most expensive runway. I will share with you why that is, but it also by the FAA's own words, is the most important runway that is needed in the United States.

The Hartsfield development program is $5.4 billion. Robert spoke a moment ago about financing. Of the $5.4 billion capital investment, roughly about $2.2 billion of that will come from either general airport revenue bonds or special facility bonds. These are borrowings that we will go into the capital markets to obtain. About another 500 million dollars will be provided from retained earning from the airport on which we do expect a fair return on investment. And then roughly about 3.2 of that will come from the federal government in the form of either grants or PFCs (passenger facility charges). About 200 million right now is estimated to come to us in the form of grants. We have letters of intent, we call LOIs, one for about 104 million, another for about 75 million. And then through entitlements and discretionary grants, we think that we will get about 200 million for this program. The balance, the three billion dollars, is expected to come from PFCs and that speaks to the power of the hub, the power of moving passengers through a facility that generates that kind of capital, that kind of revenue, that kind of credit, quality credit that is attractive to the capital markets and allows us to make this kind of capital investment. But to speak specifically to the components, the elements of the program, we have again a fifth runway that is estimated at
1.28 billion dollars. We have a new international terminal at roughly 950 million. This would be a terminal that would have about a million square feet. It would offer ten new group-5 capable gates. Klees and I were speaking on our way in this morning, and he mentioned the fact that he arrived from Belgium last night and then had to recheck his bags and travel practically across the airport to reclaim the bags to leave the airport. One of the things that we will do with this new international terminal is, if you are destined for Atlanta, you will be able to just leave the terminal on the east side and be on your way to wherever in the region you are going and not have to recheck bags and go through that significant hassle factor.

We have a consolidated rental car project or element that essentially will do two things for us. Number one, it will provide for expansion capability for the rental car companies that are just bursting at the seams. Hartsfield is the number five market in the United States for rental car service, and we are rapidly moving on number four. And, it also will help us become a more environmentally sensitive partner, responsible agency, entity in the region by reducing vehicle emissions and congestion on our roadway. So we think that is a very important investment as well.

The central passenger terminal complex, the complex in-between: We have roughly 180 gates. We will have 190 when we complete the new international terminal. It is twenty to twenty-five years old. A lot of the systems, chillers, the boilers, the escalators, elevators, air handling, everything you can think of in those terminals needs either some form of significant maintenance upgrade and better. Functionally these systems are outdated, outmoded, and so they need to be upgraded. It is a sizable investment, about 800 million dollars that we will be looking to make over the next ten to twelve years.

The one element that we will have to think about is the south terminal. This is a new domestic terminal we were looking to build on the southern front of the airport to provide for additional domestic gates. We originally envisioned a plan for sixty-seven gates. We've scaled that back to thirty-one gates, and right now the entire element is on hold. I think, being optimistic, we still need to see some signs that there is a reversal in the economy, there is a stabilization in oil prices, because, of course, next to labor, fuel is the most important component of an airline's cost, so we need to see some stabilization
in oil prices. Of course, it would be nice to also see some firmness in the economy and corporations with pent-up demand, that everyone says there is, expending some more dollars and doing some more traveling. So for the time being, the south terminal is on hold.

This is just a schedule baseline: The fifth runway is due to be completed in June 2006, the international terminal in December, the consolidated rental car facility in November of 2006 – so 2006 is a very important year for us – and then the balance of the program, the central passenger terminal complex. Those are projects that will be ongoing over the next ten-plus years. We have not decided yet when we will start the south terminal project, but when we do, it will probably be about a five-year duration.

Very quickly, the elements of the program: the fifth runway is 1.28 billion dollars. Why? Well, roughly, we had to purchase about 400 million dollars worth of real estate, about 750 acres within which to build this runway. There are other components to it. We have to divert major state highways. We will have to build a structure over I-285, a ten-lane highway. That will span, not ten lanes because the Department of Transportation said, Wait a minute, once you put that structure in place, you cannot move it, and you clearly do not move it if you have aircraft as heavy as 747s rolling across it, so you must provide for the year 2050. In 2050, let's say we are going to need sixteen lanes of traffic, and so you must span sixteen lanes to provide for the capacity to add another three lanes on either side of the roadway. This structure alone will cost us about 160 million dollars. Now, you know when you take a look at an aerial photograph of an airport, when you look down, there is nothing unusual about it except that where we have chosen to build this runway is about seventy to eighty feet lower in mean sea level than the closest runway, and aircraft climb beautifully in flight, not so well on the ground. So we will have to fill that void and transport approximately twenty-seven million cubic yards of dirt; the way to do that is through a conveyer. We have about a five-mile conveyer system from quarries that is moving this dirt. We have electrical power distribution that has to be relocated, and we have two streams for which we must provide culverts under the runway in order to preserve for the runoff of water under the project. So that is why it is as expensive as it is. As I say, it is the most expensive runway in the nation.
The central passenger terminal complex is simply refurbishment of an existing facility. We need more amenities. Clearly we need more concession space. We need to take a look at the finishes, the bathrooms. We all focus on customer service. That has to be our number one objective, and so we have to meet the needs of the customer. When you talk about meeting the needs of the customers in the context of airports, you look at functionality, you look at efficiency, you look at aesthetics, you look at comfort, and these days we must look at entertainment as well, precisely because passengers spend so much time in airports these days.

The consolidated rental car facility is about a 100-acre facility that will provide for about 8700 ready car and return spaces, eleven rental car companies, and it will be connected to the central passenger complex by way of a people-mover system. This is about a 500-million-dollar proposition. About 200 million dollars of that is for the people-mover system, and we will fund that through passenger facility charges, no charge to the rental car. But the rental car complex or rental car companies then will pick up the capital needs for the facility itself, the decks, the check-in counters, all of the roadways, and all of the operating and maintenance expense of both the facility and the people-mover system. We are in the process now of negotiating those agreements with the rental car countries in advance of moving the project forward.

The south terminal essentially is on hold. This was a terminal that we were programming to have sixty-seven gates. We are now down to about thirty gates if we build it, and we are simply going to wait a little bit more time to determine whether we go forward with it; but it is a 1.8-billion-dollar proposition should we go forward.

And that brings me to the last of the elements, the international terminal, which probably is most important of interest to the body here this morning. We presently have approximately twenty-eight international gates in concourse E, which is the concourse directly to the left of the proposed new terminal. We will have about 5.5 million international passengers this year, despite all of the difficulties that have fallen upon the airline industry. A million square feet. It will have its own Federal Inspection Services. It will have its own roadway system leaving to the east that will access major
highways, I-75 in this case, that will provide passengers with direct access to Atlanta and really to the region and the state at large.

The new parking facility will have all of the features, all of the amenities. It will be state of the art.

The common-use terminal is very important. We have put the airlines on notice, particularly. I notice that with the completion of this terminal we will be moving away from exclusive-use agreements to a hybrid of preferential and common-use facilities, so this new terminal will have state-of-the-art electronics for baggage management, ticket handling, baggage takeaway, carousels, gate management. All of it will be managed essentially by either the direct employees of the city or more probably through some company that will come in and will manage the terminal for us as we presently have with concourse E.

So in closing, I would say that from a U.S. philosophy and a U.S. perspective on airports, the central importance of airports in Hartsfield to the region is economic development. It is not cash. Hartsfield is a leader in transport, and it is because of the power at the hub, the Delta hub. Now there are assaults being made on hubs across the United States from low-cost carriers. We have it at Hartsfield today operating: AirTran. It has major inroads, having taken about ten percent of the market. JetBlue recently announced that we have signed agreements to begin service between Hartsfield and the West Coast, primarily Long Beach, California, beginning May 8. Even Hooters has come to Atlanta and is providing low-cost service. We believe that once the fifth runway is in place and we are able to reduce our delays from an average of about ten to twelve minutes per operation down to four to five minutes of operation, that will be the signal for airlines like Southwest to come knocking on our door. As we all know, the major advantage that low-cost, low-fare carriers have is quick turnaround. They keep their aircraft in the air, and that is one of the keys to success, keeping those aircraft in the air earning revenue and not on the ground, and certainly not in congested delays on the ground at some of the airports that we have even in the United States – in particular airports that I was once associated with, LaGuardia and Newark, two among them.
So we remain optimistic about the future of the economy. We certainly remain optimistic about the future of the airlines, although I, too, believe that it is a big question mark as to what the landscape will look like in the next three to five years with respect to airlines. We still are looking at American Airlines, which is on the fringe of bankruptcy although I do not believe American Airlines will actually enter bankruptcy, and then, of course, Delta, Continental, Northwest. Delta has a very high union cost structure. It is going to have to do something about that, and what management has been telling its unions is that you need to talk to us first because we have your interests in mind as opposed to going into bankruptcy and having a judge or creditors basically tell you what the deal is going to be, such as we now have seen with U.S. Airways and United. If this war is as short as another month or so, stability in the Middle East, stabilizing oil prices, we think will give way to affirming the economy and, hopefully, we will salvage some of this year, we'll have a decent year and we will be well on our way back to economic growth and the need for more runways. Thank you.

**Catherine Erkelens:** Thank you very much, Mr. Diaz. I particularly want to thank you for having accepted on such short notice to replace Mr. Plavin who could not be present because of a surgery and who apologizes because of that.

I want to launch one question and then have some reactions from the audience. It is a question of convergence. We are talking here about convergence. You see that there are huge differences between airport management structures, airports' ownership, and the involvement of the public authorities or not in the airports' management. So it will be difficult to have convergence. Is convergence necessary? Can we get there if it is necessary? At the European level, I would also say, how do you deal with it if there is no convergence? From the angle of competition, how do you look at it towards your airport competitors, because subsidizing in Europe still is accepted because of congestion. The European Commission's attention, however, already was drawn to a number of cases of unfair competition. So I would like to have the reaction of the panel on these questions: do we need convergence; do we need convergence within Europe; is there convergence within the U.S.; and do we need convergence between Europe and the U.S.?

**Robert Cohn:** I think we have an element, a degree of convergence here in the United States with federal public policy. Their airports are, for the most
part, regulated in terms of what they can access, but there is a notion of a free market for all of the service providers at the airport. I think one issue what Mario Diaz touched on, the issue of convergence of transportation in Europe. I am not sure you can deal with airports without dealing with the surface transportation, because they are, more so than here, competing modes. To the extent that the governments are consistently subsidizing mass transportation, particularly the train systems, it has a tremendous impact on airport development and convergence of public policy issues. I do not know very much about those issues in Europe, but I know that they have an impact on air service.

Catherine Erkelens: Mr. Klees, do you want to react?

Pierre Klees: I think between U.S. and Europe, for the moment, I do not see too much the need for convergence, because they are two different markets. So, in Europe the convergence is, I feel, mandatory, because they are distortion of competition, as you mentioned, very clearly. Some states or even some regions within one state are subsidizing the airport. The federal state is not subsidizing source, quite a difference between the two systems as recognized by the European Commission policy. So I think it is necessary to have a European convergence. I think it will take a long time to reap that, and even if we do that, legally, I am not sure that in the practice it will be rapidly implemented. So, convergence in Europe, yes. It will take a long time, and competition should be straight or not allowed. I am in favor of the competition, so, therefore, yes, convergence in Europe; between Europe and U.S., I do not think it is too necessary to do so so quickly, because we have two different operations there.

Catherine Erkelens: Mr. Diaz, any reaction?

Mario Diaz: Well, I think that the problems in the United States are first that you have too little demand with too much capacity, and the airlines will have to deal with that. But I think that, when you get back to health, one of the problems that the domestic carriers of the United States had is growth, and when you look at growth in the United States, it is very, very limited. Growth potential really lies in alliances and tapping of international markets. When you look at that in that perspective, I think it will be inevitable that there will need to be convergence between the United States and Europe and other areas
of the world, because that is where the growth will come from. Think of the untapped markets that are still waiting to emerge as the economies develop. Just one example that I can give you is in 1995, I believe, Hartsfield had very, very little traffic with Latin America. Delta Air Lines said, Well, you see American Airlines is in Latin America and Continental is not doing too badly, let's see what happens if we go into Latin America. I can tell you that today, next to Europe, we have more seats to Latin America than any other area in the world. I think that, too, Delta, American, and Continental, which are the big three players in Latin America, will look to form alliances with airlines in Latin America in order to tap the intra-Latin America traffic and use it as the hubs for an international spoke, of which the trunk carriers would then be the major U.S. carriers. So I think it is inevitable. I think it is just a matter of time and the conditions under which it happens.

**Catherine Erkelens:** Mr. Bluth, any reaction from the ground-handling perspective?

**Peter Bluth:** I think this part is not really affecting the airport service companies, because the normal issues which we have discussed earlier are not being touched by this convergence.

**Catherine Erkelens:** Thank you very much. Any questions or reactions, Charles?

**Charles Hunnicutt:** I wanted to respond to Bob's comments. First, on slots: I really confess that every time I think about slots at Heathrow, Narita, and Washington National, I get a headache before I get to any real resolution of how to proceed. I do think there is a need for some convergence in that area if not for any other reason than the perceptions of discrimination and fair treatment of international carriers that, and as we talked yesterday about the incredible need for global standards through ICAO in those areas where they are responsible, the IATA slot rules really need revisiting and strengthening, and the IATA slot committees composed of carriers at the airports need to be regularized and rules set up about how they operate slots. Even if you are going to have market solutions, you are still going to have issues with regard to how those market solutions are implemented at individual airports. I do not know the solution, but I know part of the solution has to be revisiting a global standard for how slots operate, and I think IATA is the appropriate agency to
pursue that if not Airport Council International. Maybe IATA and ACI together should be pursing that. It is just that IATA historically has taken the lead.

On the issue of privatization of airports, I think you raise a very important issue. The answer is, yes we did look at it back when I was in the government. The Western Hemisphere Transportation Ministers organization and the Asian-Pacific Economic Cooperation transportation working group provided incredible examples of successful privatization of airports, where the United States is clearly lagging. We tried to develop some methodology for experimenting with that and the provisions became so burdened in the political process. I will make this into a question: We actually got an experimental privatization provision in, but it had become so cumbersome, I am not even sure if anyone has ever actually tried to utilize it. Bob, do you know?

Robert Cohn: I think they have actually. They allowed for up to, I think, five pilot privatization programs. There have been five applications, but I am not sure anything has happened. I think Albany, New York, may have been one of the first to do it; but that process is still going on for the reasons you said, Charlie, cause they are so shackled with restrictions, there is not a will to have it happen, and I think there needs to be. Eventually I think there will be the development of privatization, more so, I think on the terminal facility end. I think it is much more difficult to privatize issues like runways, unless you are building your own new airport, but I think terminal development is something that is available. The international facility at JFK, I think, sort of helps the PFC. It takes less money off the PFC front for more important infrastructure development like runways.

Catherine Erkelens: Any further questions or observations?

Mario Diaz: When we talk about privatization, you need to look at two aspects of it. If by privatization you mean bringing in private management to manage facilities, either under agreements such as terminal agreements as the Port Authority has done up at Kennedy with the International Arrivals Building, or if you are talking about, even, let's say, the management of an airport, as I think BAA has done with Indianapolis, that that is okay; that is not a problem. The second level of privatization is one where you start taking
revenue off of the airport to private companies, and you run into the question or the issue of revenue diversion in the United States. Let me suggest to you why that will never happen in the United States, and it is for this reason: Recently there were discussions about the privatization of Hartsfield; there was a panel that was assembled and had estimated ranges of the money that could be paid to the city for, among other things, sewers and mortar, ranging from one to three, maybe four billion dollars, one as high as five billions dollars. Five billions dollars, right up front, paid to run and to manage Hartsfield as a private entity, commercial entity. You say to yourself, well, you know, from a city perspective, that is pretty good. And it is good, but here is the problem with it: first, you have the airlines sitting there saying, There is that much capital in this facility. Now imagine that you have roughly 400 commercial airports, and let's say not all of them are going to fetch five billion dollars, but say on average they are going to 500 million dollars. That's 200 billion dollars, almost a quarter of a trillion dollars that across the country would be dislocated from airports to cities, to counties, to states and would never be available again to the airlines to subsidize them in any way. That's money that is gone. Now, some would say, Share with the airlines. Well you know what happens when you share with the airlines. It is money that is gone before you give it to them, and so airlines, and particularly Delta at Hartsfield, but American at Dallas, United in Chicago, will always look at this and say, if there is that kind of money available in the airports, use it to subsidize our operation at the airport and don't give it to municipalities, don't give it to states, don't give it to counties to build schools and fix sewers. If anything needs fixing, it is the airline industry, so spend it on the airport. And if, in fact, you have all of these great ideas for growth and revenue, concession revenues, and all of these other ideas for charging ground handlers for fees, do it. Go ahead and do it, but don't privatize; that is, don't allow revenue to leave the airport.

Catherine Erkelens: Mr. Klees, do you wish to react?

Pierre Klees: I am quite surprised by the have reasoning. We should have a liberalization. We should have a system which finally should go through privatization of the process, when you look at it intellectually. I am quite surprised about that. But the danger we have in Belgium is the environmental situation. When you still have a body like the state, you can control what the people around the airport are claiming against, because everybody understands
that there is there such a great issue for the country, like when you are capital of Europe without an airport or with a silent airport, not inside the terminal, but outside—that means with no planes. That creates a problem, and so you have frozen courts in privatization. I do not think capital-wise, that we don't see any problem there. That is the reason why we said the government should keep twenty-five percent of the shares plus one in order to be sure that strategically a body outside the airport cannot dictate just by making special noise, not the aircraft noise but noise in the street, and so forth. So I do not understand why in the United States your approval is the opposite of Belgium, which is a socialist country. We are for the privatization of the airport and you in the U.S.A. are not. Interesting.

**Catherine Erkelens:** Thank you very much.

**John LaCosta:** The issue came up earlier that had to do with access. I want to, from my notes, collect the ideas that were shared here about equal access, and then point to slots particularly. It sounds like the access issues were rights, bilaterals, or how we go about *open skies* handling, whether you can get access to it; slots, whether you can get access to it; and then ultimately, general charges, which might be prohibitive to a commercial activity. I think that kind of rounds up most of the drivers of whether people utilize an airport, airlines fly to a particular city, and things like that. But the issue of slots comes up often: whether or not you can even make a commercial activity work without the appropriate slot. I spent quite a number of years with this issue. In the United States we used to have managed slots by trading or buying, and we used to do slot valuation studies. We would buy slots at O'Hare for a million and a half or three million dollars and these sort of things. This, I guess, is the question now: If we went to open access and decided to have the market take care of it, are you suggesting that we go back to purchasing slots; and then, if that is one of the mechanisms, who does that money go to? The handler? The government? The airline that currently operates the slot? How would that transformation take place? I can explain the way it operates in the United States. When slot controls occurred in 1968, they were a temporary fix that became quite permanent. In its wisdom, the DOT and the FAA, in 1985 I think, enacted what is called the buy/sell rule, which allowed the airlines to buy and trade slots. What they could have done and they did not is establish a pure market and auction off slots at the beginning. But that would have been highly disruptive to the longstanding
services that were there, so they made the tough policy decision of essentially grandfathering the carriers that were providing service and then having an aftermarket that, in fact, worked pretty effectively, although the new entrants claim it does not work. For example, in this demand management proceeding, I was representing Delta in that context. We pointed out to the DOT that of the 221 slots that Delta operated at LaGuardia, 171 of those slots they acquired through purchase transactions in the context of only slot or mergers or acquisitions, but they were still marketplace transactions. And so there are experiences throughout that buy/sell program, the aftermarket, does work. It is unclear whether there is a legitimate buy/sell program in the EU. I think there was a court decision that sort of gave it some – it was a gray market, but they gave it some legitimacy. It seems to me that there ought to be a legitimizized, pure free trade aftermarket in slots at the EU to make it work. But that still does not address the immediate issue of problem areas like Heathrow where, if you provide an open skies route access regime, British Airways can gain complete access to the United States. You really have to solve, in that context, the immediate access issue for the have-nots, the carriers that are not in Heathrow now, like Delta, Continental, Northwest. And that is a thornier issue. It is one that has to be addressed, but it is a tough issue.

Peter Van de Velde: Peter Van de Velde from Bird & Bird. I have a question for Mr. Cohn as well. PFCs, passenger facility charges: You said that the airlines hate it, the airports like it. But in the end I believe it is a passenger charge, so the passenger pays it. It is singled out on the ticket and the passenger pays it. In Europe the airlines hate it as well, because the airlines serve as an intermediary between the airports, collecting the charge for their benefit, and the consumer, the passenger, paying it. How is that regulated in the U.S.? Are the airlines collecting it on behalf of the airports?

Robert Cohn: The airlines are responsible for collecting it. They get an administrative fee from that collection that is supposedly equated to their cost of collection, and then they give the money to the airports. It actually is not federal funds, it is considered airport local funds. The airlines hate it, because regardless of what you call it, if you are charging a hundred dollars for a flight and four dollars and fifty cents of the hundred dollars, ultimately the consumer is looking at what is it going to cost me to get from here to there. So there is
a 4.5 percent impact on top of the 7.5 percent excise tax on top of, you know, a number of other security charge taxes. Basically I think that somebody had indicated that forty-four percent of the first hundred dollars is really a tax that gets circulated to various government entities.

**Peter Van de Velde:** So in the U.S., the airlines receive kind of a commission for collecting?

**Robert Cohn:** An administrative fee. It is very minor. One of the distinctions is that if you look at rental cars in the United States, if you rent a car in the United States, you get the $19.95, the $29.95, or the $39.95 car, and you say, Wow, that is a great rate, I am going to rent that car. And then, you come back from your trip and suddenly you look at the bill, and you say, Wait a minute! And on top of the $19.99, you have all of these charges that nobody told you about; but the rental cars are allowed to market that $19.99 . . . That is not the case in the airline industry. In the airline industry, the airlines must market to you the cost, all included. And so, what happens is that when an airline gets into a competitive war and it cuts its price, yes, the $4.50 comes from the passenger, but guess what, a lot of that, a piece of that is coming from the profits of the airline; and that is the real problem, the real concern that they have, that they cannot stay just in competition with these taxes. If they were allowed, for instance, to market airline tickets the way of rental cars, where a round-trip ticket to Los Angeles is $399 or $299 and then on top of that you have all these things, they might view it differently, but they are not allowed to do that. What you see in Europe now is that there is going through Europe a wave of airlines being sued in court, actually by the travel agents. Travel agents are saying, we are selling tickets for you, you include that charge in the ticket price, so we want to be commissioned for that. So, the airlines are getting squeezed between the consumers and the travel agents and the airports who actually benefit from the charge. That is a very interesting development going on right now in Europe.

**Pierre Klees:** I fully agree with what is said. The question is not the fact that the airlines should receive the money and pass it over through the airport. The question is that they said we are losing passengers because the total cost of the traveling is so important. Even if you include only one Euro compared to 100 Euros of the ticket, still, as you said, it is the total bill that the passengers are looking for. It is especially the problem for the low-cost carrier, but, anyhow,
what you have is an infrastructure you should pay for. That is a difficult thing to have this equilibrium between the cost and the profit you should make, because when you are capital intensive and when you are private, you have to go somewhere to get the money. And if you do not have a profit, then you should not get the money; so that's the problem we have every day with all the airlines.

Catherine Erkelens: I think another very important issue is cooperation between the different players in the industry; and some understanding and cooperation between airlines and airports is very necessary. In Montreal, e.g., you have to pay at this moment fifteen dollars before you enter the check-in, and you do not know it beforehand. Is that a passenger charge which airlines refuse to recover for the airport? There is a counter, and they asked the passengers to pay it in cash. If you get into that situation, I think you get organizational problems.

Frederik Sørensen: That is an airport construction fee. I have a suggestion and a question. The suggestion about Atlanta's inbound security screening. You go there and you take off your coat, you take off your belt, you take off your shoes, etcetera, and it goes through. Everything is fine, and then you put it back on again; but after a long international flights, it is not always easy to put the shoes back on, so you ought to put shoe horns in there as standard equipment. <audience laughter>

You mentioned the difference we have between normal network carriers and low-cost carriers, and they demand different services. They say, We don't need to take with velvet gloves the passenger through the terminal. We can accept, and in fact we want to have, more primitive facilities, more simplified, facilities. Are you able to offer differentiated levels of service according to what the airline might want, within limits naturally?

Mario Diaz: The answer is no, and for a simple reason. As I said, in the wake of September 11, the responsibilities and the duties of airports has been diluted once again. The federal government has stepped in. Airport security and screening were once the responsibility of the airlines. A very interesting case developed at Hartsfield. Recently we were having serious problems getting everyone out of the International Federal Inspection Hall to their gates for connecting flights, so we said, Well, does everyone need to be in this line?
Maybe what we can do is just take those passengers who are destined for Atlanta down to the ramp, put them on buses, and drive and escort them right off of the airport and back to baggage claim so they can pick up their bags. That way they do not have to go through security screening. Well, that lasted three days and we got a very nasty letter from the federal transportation and security director at the airport, saying, No, those passengers must still go through security. And we said, Well, why in the world? What is the objection? What is the problem? Here is the scenario that came up: First of all, there is the premise that not every other country around the world is going to pay as much attention to and focus on baggage screening and passenger screening as is the United States, because our federal government now does it. Therefore, there is a possibility that a terrorist might have some instrument, some arm in his bag. Once they come into the United States through our concourse E, they are joined with their bags, and now that passenger has access to the luggage on a bus on the airfield. The passenger can decide to take that arm out while on the airfield. That can do significant damage, and therefore the federal security director at the airport decided he did not want to take that risk. So all passengers must now continue to go through security screening. I faced it at Miami. I have faced it at other airports making international connecting flights into the United States where the port of entry is some other airport and you have to make a domestic connection to your final destination.

Frederik Sørensen: My question was more about financial costs. They might say, We do not need all the escalators; we can let people walk; we can let people, in some instances, even carry their own luggage certain distances so that they get a simplified service.

Mario Diaz: The customer is the airline, and one of our philosophies is that we are here to serve the customer, and different customers have different needs. For instance, JetBlue recently came to us with the proposition that we allow passengers not only to board to loading bridges, but we actually allow passengers to go onto the ramp and come into the back of the aircraft because loading becomes faster. It is much faster to get everyone on the aircraft and everyone off the aircraft. We said, Not a problem, they can certainly do that. And they said, We do not need first-class lounges, so we don't lease them lounges. We do not need all of the space, we just need a little office, that is all we want. We said, Fine, give them a little space. However, when we
priced those products that we do give them, they have to bear their fair share of the costs of providing those services. They have to provide their share on a common-use basis of ticket counters, take-away belts, of gates, of transportation systems, of the carousels, all of the things that go into making up the network that supports the operation of an airline.

**Catherine Erkelens:** I think we can close here. Thank you very much.
The Trans-Atlantic Relationship -
Aviation Policy: Clearing the Way to a More Open Market
Saturday, April 12, 2003 - Overview
Overview: EU/US Relations - The Place of Air Transport
Catherine Erkelens, Bird & Bird, Brussels,
Co-Chairperson of the Conference
Charles Hunnicutt, Robins, Kaplan, Miller & Ciresi, L.L.P.,
Washington, D.C., Co-Chairperson of the Conference
Gabriel Wilner, Professor and Executive Director, Dean Rusk Center,
University of Georgia School of Law
Bart De Schutter, Professor and President, Institute for European Studies,
Vrije Universiteit Brussel

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Gabriel Wilner: This is the last session of this conference, an opportunity for
our co-chairpersons to offer their views and reactions to the presentations and
discussions which have taken place for the past two days.

Catherine Erkelens: Short in the first place: it will not be a summary.
Charlie will give the summary of what was said. I want to reiterate some of
the messages which were given during these two days by a number of people.

A first message was: it is a global industry. It is the only industry which
starts from an international regulation and local regulation is derived from
that. In other industries it is the other way around: they tend to be submitted
to international regulation, but at the start were submitted to local regulation.
It was a message which came from, for instance, Louise Maillett. It was also
the message from John Kiser, who said we should not forget the existing
international framework, the fact that the existing ICAO standards need to be
respected, that we need to work with international organizations and
international associations, that we need to use the existing horizontal
agreements to solve some of the competition issues. Then there were other reactions such as from Pablo Mendes de Leon in relation to the mandate issues: How do you prevent unilateral initiatives, such as what France did with China? Also Louise Maillet raised the question: How do you prevent local individual initiatives? Even if we reach an agreement, even if we come to convergence between the U.S. and the EU under international law, we need to make sure that it is implemented. Louise referred to the difficult implementation of the noise directive, and we dealt with the issues of local implementation of the Ground Handling Directive. It was clear that there is a need for certainty; a need to be sure that the individual member states apply the treaties correctly, implement them correctly. Politically it is very essential that there is some coherent approach at several levels.

The discussion at the political level of some of the issues was postponed. Reference is made to the discussion between Robert Cohn and Paul Jasinski on the slot issues, where Paul Jasinski said, let's postpone the solution of the slot regulation, and Frederik Sørensen was saying that a global slot regulation is difficult. For those issues where a totally coherent approach at the international level seems almost impossible, discussion should be postponed, was the reaction from British Airways. Can we postpone an international solution for one or the other important element if we want to reach convergence? It is clear from the discussions during these past days that in any case a number of issues really need to be dealt with locally in the first instance before a global solution can be envisaged. Another example of such an issue is data protection, which is very much discussed and debated right now between the European Commission and the European Parliament; a common viewpoint of the European institutions is necessary before such issue can be discussed externally with the United States.

You need to get an internal solution and viewpoint before you can have external discussion.

Another message is: Even where there is liberalization, it is difficult to have proper market access. You have the example of the ground handling business. The airlines need to be prepared for the fact that, even if there is liberalization, it does not necessarily mean that market access will be very easy. There will remain a number of other issues to deal with. A transition period with some adaptation remains necessary. It is a question of time, but
it is essential that the airlines get prepared for further increased liberalization. As Otto Grunow was saying, preparation is essential. Commercial initiatives need to go on. He was referring to the discussions with the travel agents who aim at a change of the commission structures.

There were other very important messages: It is necessary to continue to talk with all industry players. Rob Donald was indicating all the problems that the airlines are facing, which are very important; it is essential that the discussion and the communication go on, not only between airlines and governments but also between airlines and airports. As Mario Diaz said this morning, if you want to charge a ground-handling fee, you will get the reactions from the airlines and from the ground handlers.

What needs to be avoided is conflict.

I would like to end with a number of citations, which may summarize what was said during the conference. The first is "convergence rather than harmonization." This was said by Frederik Sørensen. There is so much difference between the EU and the U.S. that harmonization is very difficult. There is so much to do at the local level, which unavoidably needs to be taken into account. The aviation industry today, in other words, should aim at achieving convergence rather than full harmonization, and even convergence will be difficult.

A second expression that was used was: "Think globally, act locally." Within the aviation industry, we need to continue to think globally. We need to act locally, but we need to act globally as well, because of the global nature of the industry.

I would like to end with a reference, again, to the Chicago Convention. The preamble of the Chicago Convention points out that it is based on the principles of equality and good faith. If all the players in the industry work on that basis, equality between member states and good faith, the industry should indeed manage to get the necessary results.

And as Mario Diaz said, in the aviation industry we are eternal optimists. This means that sooner or later, we should in any case achieve the industry goals.
Charles Hunnicutt: I just want to say that this has been a great conference for me. I have learned so much, and I think it turned out to be a really appropriate time to have it during this difficult time for aviation and difficult time for U.S. and EU relations generally. One of the things that I came away with – actually I am going to quote a Financial Times article from last week which summarizes a lot of the things that we said to each other: "Excess capacity, unhealthy balance sheets, and dwindling sources of funding have put the industry at perhaps its toughest spot ever." I think that captures a lot of what we said to each other. In Business Week this week, there is a long analysis on aviation. I saw another quote which is quite good and which summarizes a lot of what we said: "As the industry works its way through the current crisis, it has a historic opportunity to make changes that would allow it to become profitable and stable." So I think we captured both of those sentiments in terms of how serious the situation is, but in fact, in that crisis there are opportunities for making some advances.

Something we did not talk about but which captures a lot of what we said is in a recent article by Gerald Baliles and Greg Principato, who had headed the 1993 Commission to Ensure a Strong and Competitive Airline Industry. Their article, "Ever Get the Feeling We're Flying in Circles?" (http://www.hunton.com/pdfs/article/Flying_in_Circles.pdf) pointed out that some of the problems we are facing are cyclical, and though some of the problems are not cyclical, the cyclical problems have been around before. They wrote that the plot is the same, only the players have changed, the system is broken and there is no swift or easy way to fix it. But I think what I have heard here over the last two days is a consensus that the aviation industry is in the worst crisis in its history. We have noted that in the past two years airlines have lost thirty billion dollars. In the U.S. I think it is about 70,000 jobs. We have talked about the bankruptcies, we talked about similar situations in Europe. I think that at Lufthansa and British Airways there have probably been over (fifteen? fifty?) thousand jobs combined lost, and we have mentioned the bankruptcies in Europe several times.

Two quotes from that Financial Times article capture a lot of what we have been talking about. Fred Reid, the President of Delta Air Lines, told the Times that the combined impact of over capacity, recession, the explosive growth of the low-cost carriers, and internet distribution have been "like a meteor strike that has caused permanent climate change. There is nothing like
an extinction level event to accelerate evolution." And I think, again, that kind of captures the crisis nature, but the moment of opportunity we may be presented with. Lord Marshall of British Airways is quoted in the same article as saying, "The truth right now is that unlike other business sectors such as telecommunications, banking, and the automotive industry, at air transportation is just playing at globalization. The present crisis could form the catalyst for seminal change."

So, I guess, you may be wondering why I said this is such a great conference and now I am so negative. It is not so that we leave here on a down note. I think that we have had a great conference, but we need to be clear that the system is broken at the moment and needs to be fixed. There is a target of opportunity to fix in a systemic way the problems that we keep seeing which, in some ways are systemic to the industry. I think that we have established that the best place to start is with North American and European aviation relations; the people to lay the foundation for the thinking on how to move forward are here at this conference. So I did not speak of the ills of the industry to bring us all down as we leave but to drive home that the current crisis can be a means to bring about permanent change and that we should stop playing at globalization.

I think that it is also apparent that we should not just try to ride out the current crisis, that a systemic change is occurring. The road to bring about the change will not be easy, and we all are going to have to work together. As I said, I think the place to start is in the American-European relationship, not only because that relationship has created the global institutions that work so well for us and is an important geopolitical relationship, it also is the market that matters most in the world. I cannot leave without quoting Dean Rusk, who was one of the chief architects and proponents of an Atlantic partnership between the United States and Europe. He envisioned a new political, strategic, military, and economic relationship. Rusk envisioned free trade, end of protectionism, and much of what he pursued when he was Secretary of State led to the strengthening of the NATO military alliance and the Kennedy Round, which was really the seminal round leading to liberalization of trade in the world. So I think it is time to reinvigorate our partnership. Some of our government officials may currently be at odds over other policy issues, but with the history of our relationship and its stability, if we are going to see timely success in liberalizing international aviation policy, it will be through.

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the transatlantic relationship. I enjoyed and really accept John Kiser's *tour de raison* for the other activities that are occurring in the world, but pursuing that process to get global liberalization will take much longer than this industry has in order to achieve the goal.

I will reflect a little bit what Catherine said earlier but in a little different way: Some of the issues that I heard for more focused continuing work coming out of this conference include how to reach a compromise on ownership and control. If both sides insist on their positions, this process will not move forward. So, examining in some detail *principal place of business* as a concept in aviation needs to be pursued. Notice I didn't say *a* principal place of business or *the* principal place of business. Principle place of business needs to be examined and needs further analysis. Second, as Dorothy Robyn did on national security issues, the CRAF program, and the Brattle Group report, we need to drill down to the fundamental issues, really take the time not just to say, you have to settle a lot of issues and here they are, but really work through each of those issues to its fundamental policy foundation and what needs to be addressed in order to move forward. As Russ Bailey has suggested, we need to do the same thing in the area of labor law. It needs to no longer simply be a discussion where there are lots of issues there. We need to take on identifying ways of addressing the problems that are there and coming to a resolution as we move forward with the labor issues that are inherent in liberalization. A third issue I heard from Fred Sørensen and others was defining a method for convergence of competition policies. Here, I am reflecting Catherine, but it is more specific on competition policies, the hang up for the process, and I interpret that to mean how to reach agreement on coordination of the application of national laws. Like ownership and control, waiting for harmonization in this area will prevent progress from moving forward. On safety and security, we need to continue to support the development of European-wide institutions, ICAO global standards, and confidence building between the agencies on either side of the Atlantic. Finally, how do we build political support for moving forward at a time when air carriers are focused on more immediate problems and more narrow, current, carrier interests prevent advancing a general industry objective? I would suggest that Jerry Gordon's presentation gave us a hint at that. Can we harness local and regional governments on both sides of the Atlantic to support liberalization for their own self-interests/economic-development
objectives? There is a constituency that really could be the driving force for liberalization.

I am going to stop there, but I do want to particularly thank all the panelists who were here for great presentations. I want to again thank FedEx, Delta, and Boeing for their support of the conference.

Gabriel Wilner: There are a number of political and economic issues in the relationship between the EU and the U.S. at present that need to be discussed and adjusted or resolved, but this will be true at any time in the future. So, it seems to me that an important element of the resolution of these disputes is the methodology, the means by which we can engage in the necessary dialogue and in finding the necessary resolutions. First, before either side can move toward discussion with the other side of the Atlantic, it is important to have a convergence or harmonization within the EU. To bring to the other side an issue which is still being debated or is not yet ripe for negotiation is a very difficult one, as in the case now with the problems generated by the issue of whether bilaterals are or are not going to continue to be community policy. What about the fora to deal with these once there is this ripeness? Well there are the international fora that we have talked about: in the trade area, the World Trade Organization; in political and economic areas, the United Nations and its specialized agencies; in the area of air transport, the International Civil Aviation Organization. Other relevant international organizations in which the U.S. and Europe sit around the table include the Organization for Economic Cooperation and Development, and other economic organizations dominated by the market-economy industrialized countries, such as the International Air Transport Association, in particular. Now, what's important is that there is this constant dialogue through the delegation in Washington and through the U.S. Mission at the EU.

An important point is that despite monetary problems, there is a general framework for transatlantic dialogue that has been established, starting perhaps with the transatlantic declaration in 1990 and going on to other declarations. There has been the creation of specific means of cooperation in the Congressional/European Parliament dialogue, in the environmental dialogue, in the transatlantic consumers' dialogue, and, prominently, in the transatlantic business dialogue, which brings business people from both sides together. So there are means by which the dialogue both at the governmental
level (that is at administration levels at governmental levels) and at private levels can continue to deal with problems, among others the multi-faceted problems of the air transport industry. All sorts of fora are open. There are both multilateral fora and bilateral fora, where problems can be worked out before they become open quarrels between the transatlantic partners.

So, the framework for dialogue is in place and needs to be used so that we can get at solutions as part of the vast system of cooperation between the United States and Europe that has been fashioned over the past few decades.

Finally, I just want to thank all of you, the members of the panels, in particular, and of course our co-chairpersons, as well as my colleague, Bart De Schutter, President of the Institute for European Studies, for your great cooperation in making this a most valuable meeting. So, thanks to all.

Bart De Schutter: Thank you very much, Gabriel. I will be very short, because, first of all, I totally agree with the conclusions brought by the co-chair. I am not an expert either, but I must say that within a day and a half, this was an extremely valuable exercise for me at this gathering, and the panels and the discussions gave me a full feeling of the very important momentum in the aviation industry. It certainly was a valuable exercise in my capacity as president of the Institute for European Studies, because we heard this morning from Pierre Klees that Europe is still not a full reality, which leaves us much room indeed to work on the future construction of Europe in Brussels.

I think Catherine underlined already that this is a global issue and a global issue asks for a global approach, a global solution within global institutions, and it also needs a balanced answer. I am not going to repeat what Gabriel already said – there are international institutions; there is a whole portfolio. Maybe within those institutions there should be different or new fora or new platforms for dialogue and confrontation. I think within the globalization world there are new players. Maybe the states are no longer the key actors in regulating the interrelationship in the global context. Maybe there is need within these international organizations to have momenta and platforms of encounter between the states, between the new institutional players such as the European Union, fully recognized as a full partner in, let's say, the new kind of sovereignty we develop in Europe. But the industry should be partner in
the dialogue, as the consumer should be, as today the financial world is claiming all the time to be one of the key stakeholders in any solution to economic crisis we are going through.

What is a global balanced solution? I know what is not. It is not going for unilateral regulation in this sector and therefore provoking clashes with other partners in globalism, and having to negotiate a balanced solution afterwards. Just to give one example: bringing out the Advance Passenger Information System (APIS) or the Passenger Name Record (PNR) Initiative. This is perceived as very provocative toward Europe, where there is the directive on the protection of privacy, and where the United States and Europe two times already have had very difficult moments in adjusting to each other with the Safe Harbor principles and with the exchange of Europol data toward the American judicial authorities. Knowing this divergent view, why not proactive dialogue on registering and controlling movement of passengers throughout the world? I am not saying it is unnecessary, but it is unfortunate that there is a unilateral regulation which then gets challenged and comes into a more tense environment than the type of climate we need for finding that balance.

I think we have proven, thanks to you, thanks to the quality of the input of the panelists from the U.S. and from Europe, and thanks also to the interventions within the discussion, that besides the official forms of dialogue, the unofficial dialogue in the quiet academic surroundings of a campus like this one is extremely valuable. Tomorrow we will all act in different capacities, either as a civil servant or as an academic or as a representative of an airline or an air industry, but I think the moments we have shared here together and the quality of the exchange of views and feelings and potential solutions to problems, are extremely important. This conference was of extremely high quality and certainly can contribute to a better understanding of the respective positions.

From the Institute, from the European participants, Gabriel, a great thanks to you, to the Dean Rusk Center and the School of Law, and particularly to all the members of your staff who made this conference possible and who made our stay extremely pleasant within sunny Athens. We are ready for a second edition on a different topic if the Dean Rusk Center might be interested in future cooperation with the Brussels Institute. Thank you very much.
Panel Participant and Keynote Speaker

Biographies

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**John V. Augustin** is Senior Legal Officer, International Civil Aviation Organization (ICAO). He has worked in the ICAO Legal Bureau since 1989 and has served at several meetings of the ICAO Legal Committee, Assembly, and at Diplomatic Conferences. He is a member of ICAO teams investigating the 1983 shoot down of Korean Airlines Flight KE 007 and the 1996 shoot down of two U.S. civil aircraft by Cuban military aircraft.

Prior to joining ICAO, Mr. Augustin worked in the Prime Minister’s Office and the Ministry of Foreign Affairs, St. Lucia. He was attached to the Department of Foreign Affairs and the Department of Prime Minister and Cabinet, Australia; United Nations, New York; and High Commission for Eastern Caribbean States, London, U.K. He has an LL.B. from the London School of Economics and Political Science, an LL.M. from the University of London, and an LL.M. in Air and Space Law from McGill University, Montreal. Mr. Augustin is a Member of Bar in England and in St. Lucia.

**Russell Bailey** is senior attorney in the Legal Department of the Air Lines Pilots Association (ALPA), International. He received his undergraduate degree in history from Brown University in 1973 and, after serving for four years in the military, attended Georgetown University Law Center, where he received his law degree in 1980.

Upon graduating from law school, Mr. Bailey joined a Washington, D.C. law firm where he worked on labor, corporate, and administrative law matters. In July 1983 he joined ALPA's Legal Department. At ALPA he has
represented the Association in a variety of legal matters before the federal courts (e.g., duty of fair representation; contract enforcement; administrative law) and federal agencies such as the Department of Labor and the Department of Transportation (e.g., mergers, route sales, carrier selection, carrier fitness). He also provides to the Association's elected officers advice on collective bargaining negotiations and the laws and aviation agreements that regulate international air transportation services.

Mr. Bailey frequently serves as the AFL-CIO representative in air transport service negotiations and is a member of the United States Trade Representative's Labor Advisory Committee for Trade Negotiations and Trade Policy.

Gerard Bekebrede has been employed at the Dutch Ministry of Transport since 1999, and since 2002 has been a member of the management team of the Aviation Policy Department. In this function, he is responsible for environmental issues related to aviation. He is member of ICAO's Committee on Aviation Environmental Protection and since 2001 has been the chairperson of the environmental committee (ANCAT) of the European Civil Aviation Conference (ECAC).

Mr. Bekebrede successfully completed his study in Aerospace Engineering at Delft University of Technology in 1974. He then worked at National Aerospace Laboratory NLR in the Netherlands and was involved in research projects related to the environmental aspects of aviation. The last five years of his employment at NLR he was leader of the environmental studies department. Under his responsibility a wide range of projects related to gaseous emissions, noise exposure, and noise monitoring were carried out. In 1997, he accepted the invitation to be one of the lead authors of the Special Report on Aviation and the Global Atmosphere which was prepared by the U.N. Intergovernmental Panel on Climate Change in the period 1997-1999.

Peter Bluth has thirty-six years of experience in the aviation industry. He joined in 1967 the Lufthansa Group and performed various functions (e.g., marketing research, assistant to the Executive Board Member Operations). Since 1983, Mr. Bluth has been involved in the ground handling industry. He
started negotiations of handling agreements for Lufthansa worldwide, then became responsible for Lufthansa's worldwide ground operation. In 1990, he established Lufthansa Airport and Ground Services GmbH (in 1999 renamed GlobeGround GmbH) as a subsidiary of Lufthansa to participate in the growing ground handling market and, as CEO, he built the company to a global active handling organisation.

When GlobeGround was sold in 2001 to the French service company Penauille Polyservice S.A., Peter Bluth was nominated as CEO of GlobeGround's related company Servisair. The combined Servisair/GlobeGround group is the world's leading ground handling company, operating at about 200 airports in forty countries, with an annual turnover of approximately one billion Euros and employing about 30,000 staff. In February 2002, Peter Bluth left Servisair/ GlobeGround.

Peter Bluth has a diploma for economics. He is board member, module coordinator, and lecturer for the Aviation MBA at the Danube University, Krems/Austria.

**Robert Cohn** chairs Shaw Pittman's transportation practice group. His practice concentrates in aeronautic and aviation law and includes federal, state, and international regulatory matters, complex commercial transactions, mergers and acquisitions, antitrust counseling, legislation, enforcement matters, bankruptcy, and litigation. He practices before various agencies of the federal government (including the Department of Transportation, Federal Aviation Administration, Transportation Security Administration, Department of State, and the Department of Justice), the federal courts, the Congress, and various foreign governmental agencies and tribunals.

Mr. Cohn's clients include major U.S. scheduled airlines, foreign airlines, charter airlines, commuter airlines, major municipalities and airports, industry trade associations, tour operators/ travel agencies, aviation technology companies, and airline venture capital investor groups. His varied practice includes counseling and representation of airline and airport clients in regulatory proceedings before the U.S. Department of Transportation, counseling and representation of airline and airport clients in connection with certification, safety, and enforcement issues before the Federal Aviation
Administration, litigation in the federal courts, counseling and representation of clients in complex commercial transactions, including airline alliances and mergers/acquisitions, and counseling and representation on legislative matters in the Congress.

In recent years, Mr. Cohn served as principal outside regulatory counsel to several of the country's major airlines, as well as counsel to several successful start-up air carriers. He previously served as General Counsel to People Express Airlines, one of the largest post-deregulation new entrant airlines.

Before entering private law practice, Mr. Cohn held senior legal and policy positions at the Civil Aeronautics Board from 1970-1977, one of which was as Executive Assistant to three CAB board members, including the Chairperson and Vice Chairperson.

Mr. Cohn was awarded his B.A. degree from Syracuse University in 1966 and his J.D. degree from Georgetown University Law Center in 1969. He is admitted to practice in the District of Columbia, the District of Columbia Fifth and Eleventh circuits of the U.S. Court of Appeals, and the U.S. Supreme Court.

Professor Bartholomé De Schutter, is Professor of Law at Vrije Universiteit Brussel, Brussels, Belgium, where he is President of the Institute for European Studies and specializes in international criminal law, IT law, and data protection. He has been full professor at Vrije Universiteit Brussel since 1969 and has served as Rector, Pro-rector, Dean of the Faculty of law, Director of the Center for International Criminal Law, and Director of the postgraduate program on International Legal Cooperation. He has a Licencié en Sciences Politiques et Diplomatiques from Univ. Libre de Bruxelles, a Dr. Jur. From Vrije Universiteit Brussel, and an LL.M. from Harvard University School of Law.

Professor De Schutter is the Belgian representative in the Schengen and Europol Common Control Authority and is Belgian Data Protection Commissioner.
**Paul Stephen Dempsey** is Tomlinson Professor of Global Governance in Air & Space Law and Director of the Institute of Air & Space Law at McGill University in Montreal, Canada. From 1979-2002, he held the chair as Professor of Transportation Law and Director of the Transportation Law Program at the University of Denver. He was also Director of the National Center for Intermodal Transportation; he served as an attorney with the Civil Aeronautics Board and the Interstate Commerce Commission in Washington, D.C.; and he was Legal Adviser to the Chairman of the I.C.C.

Dr. Dempsey is also Vice Chairman & Director of Frontier Airlines, Inc. and has served with that airline since its birth in 1994. He is Director of the Jordan Centre for Aviation Security and Safety at Queen Noor Civil Aviation Technical College in Amman, Jordan. He was a founder and first Chairman of the Board of Governors of the Certified Claims Professional Accreditation Council, Inc. and President and Director of the Genesee Foundation, Inc. He has served as a consultant to U.S. and foreign airlines, railroads, motor carriers, bus companies, transportation labor organizations, industry associations, government agencies, and telecommunications companies.

Dr. Dempsey has delivered expert witness testimony and studies before the Public Utility Commissions of the states of California, Colorado, Kansas, Iowa, Ohio, Pennsylvania, and Washington, the Province of British Columbia, and the courts of Missouri and Nevada. He has testified before the transportation committees of the U.S. Senate, the U.S. House of Representatives, the Canadian Senate, and the state legislatures of Colorado, Michigan, and Texas.

Professor Dempsey has written more than fifty law review and professional journal articles, scores of newspaper and news magazine editorials, and several books. He has an A.B.J. and a J.D. degree from The University of Georgia; an LL.M. from George Washington University; a D.C.L. from McGill University. He is admitted to practice law in Colorado, Georgia, and the District of Columbia. Professor Dempsey was a Fulbright Scholar, was awarded the Transportation Lawyers Association Distinguished Service Award, and was designated the University of Denver's Outstanding Scholar. He was the first individual designated the University of Denver's Hughes Research Professor and DePaul University's Distinguished Visiting Professor of Law. The Colorado transportation community named him
“Educator of the Year,” and inducted him into the Colorado Aerospace Hall of Fame. From 1979-2002, he was faculty editor of the *Transportation Law Journal*. He also served on the Editorial Boards of the *Denver Business Journal* and *The Aviation Quarterly* and currently serves on the Editorial Boards of the *German Journal of Air & Space Law* and the *Annals of Air & Space Law*.

Professor Dempsey was host of the weekly talk show, "Your Right to Say It" on KWGN-TV; he has appeared on the ABC Evening News with Peter Jennings, the MacNeil-Lehrer News Hour, ABC World Business Report, NBC Today, ABC Good Morning America, CNN Crossfire, National Public Radio, CBS Radio, NBC Mutual Radio, and other news broadcasting networks in the United States and abroad. His editorials have been published in numerous newspapers and news magazines, including *Newsweek*, the *New York Times*, and the *Wall Street Journal*.

**Mario Diaz** assumed the position of Deputy General Manager for Hartsfield Atlanta International Airport in January 1999. He is responsible for ensuring that the daily operational activities of the world’s busiest airport are executed. These areas include operations, business, finance, and capital development. As the deputy general manager, his top priorities are providing superior customer service and guiding the airport’s expansion through the Hartsfield Development Program, “Focus on the Future.”

Prior to coming to Atlanta, Mr. Diaz was the manager of business, properties, and commercial development for New Jersey Airports, a post he held for four years. In this position, he managed the division responsible for all business and lease negotiations at Newark International Airport as well as the day-to-day oversight management of Teterboro Airport, one the nation’s premier general aviation airports and a major reliever airport for Newark International.

His seventeen-year career with the Port Authority of New York and New Jersey began in 1981 and included key management positions in leasing, finance, marketing, operations, and properties. During this period, Mr. Diaz also served eighteen months as the assistant director of the redevelopment program at John F. Kennedy Airport.
A native of Barranquitas, Puerto Rico, Mr. Diaz earned his bachelor of arts from Rutgers University in Newark, New Jersey. He also earned a master of business administration in finance from Rutgers Graduate School of Business Administration in New Jersey.

**Rob Donald** was in private practice for ten years before he came to the International Air Transport Association (IATA). He had the opportunity in 1994 to go to work for them in Geneva. Fortunately, they brought the legal team back to Montreal, an ideal location at which to deal with international aviation through the expertise of not only IATA, but also ICAO and McGill University. Rob Donald has been director of IATA's Montreal office since 1995 and General Counsel of the International Air Transport Association since 2001. He holds his B.A. from Concordia University, a B.C.L. from McGill University, a diploma from Kings' College in London in European Community competition law.

**Catherine Erkelens** has been a member of the Brussels bar since 1984. She has developed a strong client basis in the aviation sector, especially since 1995 when she successfully litigated for GlobeGround, Lufthansa’s then-ground handling subsidiary, to be able to start third-party passenger handling at Brussels National Airport. This was before the European Directive aiming at the liberalization of the ground handling market was drafted.

In another litigation case, Ms. Erkelens and her aviation team managed, through a number of urgency court orders, to save for the airlines operating at Brussels National Airport a significant amount of airline exploitation tax levied by the municipality of Zaventem. Other work for the aviation sector concerns advice and litigation in relation to trade practices; litigation and advice on the relationship between the airlines, the travel agencies, and the tour operators; and advice on issues concerning the use of new technologies (e-ticketing, relationship with computer reservation systems (CRS), online offering of travels). Ms. Erkelens’ aviation team was involved in a number of issues relating to the Sabena bankruptcy, including the transfer of the Sabena codes to SN Brussels Airlines and litigation in relation to the sale by the Sabena trustees of the Sabena ground handling business unit.
She plays an important role in the international aviation sector group of Bird & Bird, with activities in Brussels, London, Paris, Stockholm, Düsseldorf, The Hague, Milan, and Hong Kong. She has published several articles on aviation, such as in the *Financieel Economische Tijd*, one of Belgium’s financial and economic newspapers, and a member of her team has published the book *One Sky for Europe?* (2002).

Ms. Erkelens is a founding member and a board member of the Brussels Aviation Law Forum (BALF) and a member of the European Aviation Club (EAC).

**Dr. Gerald L. Gordon** is President and Chief Executive Officer of the Fairfax County Economic Development Authority, Virginia, one of the largest office space markets in the United States. He has been with the FCEDA since late 1983. In his present role, he was instrumental in creating the Emerging Business Forum and bringing the 1998 World Congress on Information Technology to Fairfax County.

Dr. Gordon has worked for Arlington County, Virginia and the United States Department of Labor and has taught at the University of Maryland, George Mason University, and Virginia Commonwealth University. He has consulted with numerous city and state governments throughout the United States and around the world, as well as the governments of the Republic of Poland, the island of Vieques in Puerto Rico, and the Federated States of Micronesia; has served as a consultant to various government agencies, the United States Navy, businesses, non-profit organizations, associations, colleges and universities, and the United Nations; holds several positions on boards; and serves as chairman of several organizations.

Dr. Gordon holds a Bachelor’s Degree from The Citadel, a Master’s Degree from George Washington University, and a Doctorate in International Economics from the Catholic University of America. He is the author of eight books and numerous articles on strategic planning, economic development, leadership styles, and other management topics.
J. Otto Grunow is Managing Director–International Affairs at American Airlines, based in Dallas, Texas. Mr. Grunow is responsible for the airline's overall international regulatory, interline, and industry affairs, including proceedings before the U.S. Department of Transportation and foreign aeronautical authorities; bilateral negotiations; interline relationships with other airlines; liaison with IATA, ATA, and other industry groups; and immigration and airport facilitation.

He previously was Vice President and General Counsel for AMR Global Services in Dallas, Texas (legal and regulatory affairs of five American Airlines service companies); Corporate Attorney for American Airlines in Dallas, Texas; Corporate Associate with Donovan Leisure Newton & Irvine in Washington, D.C.; and Corporate Associate with Gibson, Dunn & Crutcher in Washington, D.C.

Mr. Grunow has a B.A. in Legal Institutions, International Relations, and History studies from University of the Witwatersrand, South Africa; a Master of Arts in Political Science from University of Wisconsin Graduate School; and a Juris Doctor from University of Wisconsin Law School.

Lars-Olof Hollner is Counselor with the Delegation of the European Commission to the United States in Washington, D.C. He is head of Transport, Environment, and Energy. Mr. Hollner previously served as Deputy Head of U.S. and Canada Affairs, DG Relex, European Commission; was detached to the Swedish EU presidency, permanent representation, Brussels; served as Principal Administrator, U.S. desk DG Relex, EC; Counselor for the Swedish Ministry for Foreign Affairs, U.S. and Canada Affairs; First Secretary, Swedish Embassy in Washington, D.C.; Senior Officer in Trade Policy Affairs, EFTA Secretariat, Geneva; Head of Section, Swedish Ministry for Foreign Affairs; Attaché for Trade Policy and Customs Affairs for the Swedish Delegation to the European Communities; Head of Section of the Swedish National Board of Trade; and Economist, Esselte AB.

Counselor Hollner graduated from the Stockholm School of Economics where he majored in international economics and financial analysis. He attained the rank of Captain as a Reserve Officer in military service.
Charles A. Hunnicutt, is partner, Robins, Kaplan, Miller & Ciresi L.L.P., Washington, D.C., where his focus of practice is on government affairs, transportation, maritime, aviation, and international trade. His practice includes all aspects of international trade, with particular emphasis on government regulation of international trade, including representation in unfair trade actions such as countervailing and antidumping duty investigations. Due to the broad commercial and international aspects of his practice, Mr. Hunnicutt provides legislative lobbying and representation before executive branch departments and independent regulatory agencies, as well as in related litigation and appellate work.

Mr. Hunnicutt has an extensive background in aviation policy and international trade from his past tenures with the U.S. Department of Transportation and the U.S. International Trade Commission. He served as Assistant Secretary of Transportation for Aviation and International Affairs from January 1996 until March 1999. In this capacity, he was the principal adviser to the Secretary of Transportation on commercial aviation policy, including economic and regulatory issues as well as other international transportation and trade matters. He also directed Department of Transportation activities involving the negotiation and implementation of international aviation agreements and the development of international aviation policy, oversight of domestic aviation issues, and international activities in maritime, highway, and rail transportation.

Mr. Hunnicutt served as Legal Adviser to the Chairwoman of the U.S. International Trade Commission from 1980 to 1987, as Executive Assistant to the Under Secretary of Commerce for International Trade from 1979 to 1980, and as Assistant to the Deputy Assistant Secretary of Commerce responsible for textile and trade policy from 1977 to 1979. In 1977 he worked in the White House Presidential Personnel Office, following his work on the Carter-Mondale transition team. He was selected to assist the government of Ukraine in developing a legal system acceptable to World Trade Organization standards, including new customs and intellectual property regimes and product standards procedures.

Mr. Hunnicutt is a member of the bars of the District of Columbia, Georgia, the United States Supreme Court, the U.S. Court of International Trade, the U.S. Court of Appeals - Federal Circuit, and the U.S. Court of
Appeals - District of Columbia. He has a B.S. in International Business from The American University, Washington, D.C.; a J.D. from the University of Georgia, where he was Editor-in-Chief of the *Georgia Journal of International and Comparative Law*; and an LL.M. in International and Comparative Law from Vrije Universiteit Brussel, Brussels, Belgium, with a Certificate of the Hague Academy of International Law.

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Previously he served as first Staff Attorney, then Senior Attorney, Domestic and Regulatory Affairs, Federal Express. He also was Assistant General Counsel with the Tennessee Department of Environment and Conservation in Nashville, Tennessee. Mr. Jensen has a B.A. from the
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**Pierre Klees** has a long list of experience: electrical and mechanical engineer at the University of Brussels-ULB, nuclear engineering and management for Westinghouse Learning Corp. and MIT, as well as Executive Chairman of the Board of BIAC (Brussels International Airport Company), Chairman of the Board of the Belgian Post, Chairman of the Board of Alcatel-Etca, Chairman of the Board of AIB-Vinçotte, Chairman of the Board of the Fondation des Administrateurs, Chairman of the Board of Hodie Vivere, Member of the Board of ACI Europe (Airport Council International Europe), Member of the Board of AXA-Royale Belge, Member of the Board of ALSTOM ACEC Energie, and Member of the Board of Trasys. Mr. Klees also was past-president of the Federation Royale d’Associations Belges d’Ingénieurs Civils et d’Ingénieurs Agronomes (FABI); General Manager, Deputy Chairman of the Executive Committee and Member of the Board of Union Minière (1989 – 1992), CEO and General Manager of ACEC (1987 – 1989), General Manager of ACEC (1986 – 1987), General Manager of ACEC Groupe Transport (1985 – 1986), General Manager of the ACEC Nuclear Division (1977 - 1986), Sales and Marketing Manager of Westinghouse Electric Nuclear Europe (1971 –1976). He also served as Member of the Board and on the Executive Committee of Fabrimetal (1985 – 1998), and as Member of the Board and on the Executive Committee of “Union Wallonne des Entreprises” (1987 – 1998).

Professor Klees is professor emeritus University of Brussels (ULB), President of Comité de l’Académie pour les Applications de la Science (CAPAS), Scientific Counsel Chaire Ethique des Affaires (ULB), Member Schumpeter Group (ULB), President Impact Cooremans, and was Expert to the European Commission DG-IV on airport competition (1995). He is a Member of the Board of the Amis de Bordet.

**Louise E. Maillett** is the Acting Assistant Administrator for the Office of Policy, Planning, and International Aviation of the Federal Aviation Administration in Washington, D.C. Her responsibility includes developing national and international aviation system policies, goals, and priorities. She
has led the formulation and representation of U.S. positions in ICAO Assemblies, Safety Summits, and Security Summits as well as formulating domestic policy in areas such as aviation reauthorization and congestion at LaGuardia.

Ms. Maillett was the previous Director and Deputy Director of the Office of Environment and Energy. While in that position, she represented the United States at several International Civil Aviation Organization Assemblies and meetings dealing with international aircraft certification standards for noise and emission. Domestically, she helped formulate the phase-out of Stage 2 aircraft within the United States. From June through December 1999, Ms. Maillett served as Acting Associate Administrator for the Office of Airports. She began at the FAA International Affairs and Legal Policy Staff in the Office of the Chief Counsel. Prior to joining the Federal Aviation Administration, Ms. Maillett worked as an attorney for ACTION and the Peace Corp, and she served briefly as a Foreign Service Officer with the U.S. Department of State.

Ms. Maillett received her B.A. degree from Assumption College and her J.D. from the University of Maine School of Law. She is a member of the Maine and the District of Columbia Bar Associations.

Pablo Mendes de Leon has broad experience in the field of international aviation law. He is director of the International Institute of Air and Space Law at Leiden University, The Netherlands, and has organized conferences and seminars worldwide. Dr. Mendes de Leon has published over 100 articles and papers. In 1992, he defended his doctoral thesis, Cabotage in Air Transport Regulation, cum laude at Leiden. He often is invited as a speaker at international conferences; his advice is sought by governments, international organizations, and private parties. He is chairman of several international committees and foundations active in the field of aviation law and aviation policy and is a board member of the most distinguished magazines in these fields.

Timothy D. Meskill, Marketing Director–Market Analysis, Boeing Commercial Airplane Group since 1999, is responsible for providing data,
research, forecasts and for identifying market opportunities for the Commercial Airplane Group. He began at Boeing in 1977 as an airline financial analyst conducting financial evaluations for U.S. and international airlines and their ability to make long-term investment decisions. Prior to that, he worked as a transportation industry analyst with the Civil Aeronautics Board. Since joining Boeing, Mr. Meskill has served as airline financial analyst, airline account manager, functional representative to the Quality Improvement Center, manager of leased airplanes coordination, and manager of industry communications. In January 1994, he re-joined Marketing as editor of Current Market Outlook, Boeing's annual assessment of the demand for world air travel. This assessment estimates the jet airplane capacity to meet the projected growth in travel demand as well as the replacement market for older in-service airplanes. As the aviation industry has evolved to encompass new structures and markets, this assessment has been expanded to include the aviation services required to support the operation of the world jet fleet.


Mr. Moloney is past president of the International Aviation Club of Washington and served on the Board of Governors of the Aero Club in Washington. He also serves on the Board of Directors of the American-Turkish Council.

Prior to entering the airline business, Mr. Moloney worked at the U.S. Department of Transportation in the Office of Policy and International Affairs. He also worked on the Regan-Bush 1984 presidential campaign and at the White House on Vice President Bush's staff.

Mr. Moloney received his undergraduate degree in Political Science and Organizational Behavior/Management from Brown University in Providence, Rhode Island and his J.D. degree from the Columbus School of Law, Catholic
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A California native, Mr. Moloney now resides in Northern Virginia. He has an eleven-year-old son.

Frederik Sørensen, is a Civil Aviation Counsellor and is working as an expert for ICAO in Africa. He writes and lectures on a variety of aviation issues, especially those concerning the European Union. Until his retirement in October 2001, he served as head of the Economic Regulation and Air Transport Agreements unit of the Directorate General for Energy and Transport of the European Commission.

Mr. Sørensen is a transport economist from the University of Copenhagen in 1962. After a career in Denmark, in 1973 he joined the European Commission, moving from local authority administration to a consultancy in transport planning, in particular airport planning. In 1977 he was nominated as head of the then-created Air Transport Division and became responsible for the development of an air transport policy for the EU. Mr. Sørensen, therefore, has been involved in this activity right from the start, especially with the development of the first, second, and third aviation packages which resulted in Community-wide liberalisation of air transport in January 1993. In addition, he has developed rules on computer reservation systems, slot allocation, and passenger protection. This has made him an acknowledged expert in aviation regulatory matters. After 1993 his time was much occupied by the discussion on aviation relations with third countries (Central Europe the United States), Yugoslav embargo, etc. He has accomplished the negotiation of a multilateral agreement on a European Common Aviation Area (ECAA) and he has developed drafts of a Transatlantic Common Aviation Area (TCAA).

Gabriel M. Wilner is Charles H. Kirbo Professor of International Law, Executive Director of the Dean Rusk Center–International, Comparative, and Graduate Legal Studies, and Associate Dean of the University of Georgia School of Law. He directs the graduate legal studies program, directs the Rusk Center programs and activities, and sets the strategies and goals of the
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Professor Wilner has served as legal adviser and consultant to various United Nations institutions and to African and Asian regional institutions. He has been an adjunct and visiting professor at the Free University of Brussels since 1976, a visiting professor at the University of Paris (II), has served as an arbitrator in transnational disputes, and was drafter of the 1988 Georgia Arbitration Code. He has written numerous publications on international law, international arbitration, and private international law (conflict of laws). He served as an associate in the legal department of the American Arbitration Association, practiced law in Brussels, was director of studies at the Hague Academy of International Law, worked in the legal affairs office of the United Nations where he later was a legal officer in the technology transfer division of the U.N. Conference on Trade and Development.

Professor Wilner earned his bachelor's degree from the College of William and Mary, a Dip. P.A. from the University of Exeter in England, and law and master of laws degrees from Columbia University School of Law. He carried out graduate legal studies at the Université Libre de Bruxelles (ULB).