This contribution will argue that airlines would benefit from more clarity regarding the range of joint activities they can operate with competitors. It focuses on code share agreements as an exemplar of such joint activities. However, comparing the aviation industry to its sister industry, the maritime sector, there is a remarkable disparity of regulatory treatment.

By contrast to the aviation industry, liner shipping companies benefit from a wide-ranging regulation which exempts an extensive range of cooperative activity. Airlines have no such “safe harbour” and this creates needless uncertainties relating to compliance. This chapter will argue that this differential treatment between airlines and liner shipping companies has no convincing policy justification. It concludes with a plea for a block exemption for code share agreements.

1. Introduction

In the late 1970s, a process of deregulation started in the airline industry which led to major structural change. The pre-eminence of national flag carriers gradually came under attack, as state-owned airlines were privatised and operating licences were given to new independent carriers. As large ‘legacy’ carriers came out of public ownership, they increasingly restructured their services on a ‘hub and spoke’ model, connecting passenger flows from regions to centralised hub airports. At the same time, a new generation of independent, low cost carriers emerged, challenging the large airlines in the mass tourist passenger market. On short haul intra-EU routes, large
‘legacy’ carriers now face competition from budget airlines which are often better able to make short journey services profitable. On the other hand, large international carriers have wider, intercontinental networks and they can cross-subsidise their unprofitable short haul flights from the profits of their more lucrative international services.¹

Achieving the economies of scale and of scope that are required to offer a truly comprehensive coverage remains therefore beyond the practical reach of most if not all airlines. Some city pairs are also unable to provide demand that sustains a regular service. The solution has been cooperation and a wide range of joint venture models have emerged in the aviation industry over the past two decades.² These include overarching framework alliances, such as the Oneworld or STAR Alliances; ‘metal neutral’ revenue sharing agreements;³ to code sharing agreements and, at a loosest level of integration, interlining agreements. This paper will focus on perhaps the most common these arrangements: the code share agreement, henceforth also referred to as CSA, as an example of the regulatory treatment of airline cooperation agreements.

2. Code share agreements (CSAs) in the EU

CSAs are very common.⁴ A comparatively recent survey of CSAs in 2007, found that there were more than 4300 code share agreements in existence within EU airspace, of which 1367 were code share agreements on routes with parallel operations.⁵ In 2010, Airline Business listed some 700 code sharing agreements between members of the three main alliances, for instance, Oneworld) and each other and other airlines.⁶

The multiplicity of CSAs makes a definition hard to formulate but a serviceable one was proposed by the European Competition Authorities in their 2004 survey

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¹ This economic strategy has been thoroughly discussed in specialist literature. See, for example: Stuart Cole “Applied Transport Economics: Policy, Management and Decision Making”, Kogan Page, 2005, page 197.

² See the joint report of the European Commission and the US Department of Transportation “Transatlantic Airline Alliances: Competitive Issues and Regulatory Approaches” (16 November 2010), which contains a succinct description of the spectrum of airline cooperation in its introduction, especially at paragraphs 16 to 21.


⁴ Ibid, paragraph 4.


⁶ Airline Business magazine, September 2010.