THE PRINCIPLES OF MARKET ACCESS
The Aeropolitics of Ownership and Control

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INTRODUCTION

Market access in international commercial aviation is based on the principle that States have complete sovereignty over their airspace. It therefore follows that (1) a State must first secure air rights from other States before its airlines can operate on specific international routings to and through that other State, and (2) that same State must also designate an airline before it can exercise those rights the State has secured by formally notifying other State(s) as to which airline(s) it considers may exercise those rights. In a bilateral exchange between State A and State B, for example, it is State A that designates which of its own carrier(s)[1] may exercise traffic rights between the two States. Part of the basis by which this designation is made (often in conjunction with a licensing process) almost always includes meeting criteria relating to the airline's ownership and control[2]. thus, the other State has the right to refuse to grant the designated airline operating authorisation, and therefore access, if ownership and control criteria specified in an ASA (air services agreement) between the two States are not met.

This process may seem counter–intuitive, such that one might expect it should be *State B* which gives approval for operations to its airports by a State A carrier. After all, it is in State B's interest to ensure that the State A–based carrier(s) awarded the rights by State A adhere to specific criteria such as, for example, ownership, safety governance and management control. A State may designate an airline to operate international services, however it must be remembered that ASA partners reserve the right to challenge, under the criteria specified in the ASA, that designation. In this case, these criteria can include whether or not nationals of the designating state have ownership and control of the airline being designated. The important point to be made here is that *the State receiving the designated airline of another partner State may use its discretion in challenging the operating authority of the designated airline.* As Hocking (2011) notes, "ownership and control criteria are often political criteria and may be applied, or not applied, on a discretionary basis by States." In other words, States may, in some instances, choose to ignore an airline's failure to meet agreed ownership and control criteria, but are highly unlikely to ignore those which may threaten safety oversight. Put simply, the adoption of discretionary criteria relating to ownership and control is not always binding, but may be used to assure both parties (in the case of plurilateral or regional ASAs) or all parties (in the case of multilateral ASAs) that market access is available to airlines meeting those criteria.

[1] There may be more than one, in which case it is called multiple designation.

[2] For clarification, "ownership" refers to corporate shareholding (equity), while "control" refers to management or operational oversight and, more recently, the geographic or regulatory centre of an airline's operations.

SHIFTING TRENDS

Liberalisation of ownership and control criteria has followed a similar, albeit more slowly, trajectory as the liberalisation of traffic rights. This has been driven by two key factors. First, ownership and control dictate airline business practice. Given the cyclical nature of the business and high fixed costs, airlines have a strong need for capital and face increasing operating cost pressures (particularly fuel) and increased competition from other airlines adopting aggressive business models. Airlines have thin operating margins and are subject to external shocks that impact on demand for their services. Organisations such as ICAO and IATA argue that restrictions in access to global equity capital due to restrictive ownership rules stifle airline growth. Most airlines were once state–owned, but with liberalisation came privatisation. By restricting ownership to nationals, this limits the source of needed operating capital or capital necessary for expansion. This is especially the case in developing countries. Hocking (2011) argues correctly that it may also restrict expertise on a Board.

Second, the removal of restrictions on goods and services has sparked a general trend toward relaxed ownership within other economic sectors in an economy. The speed at which these policies have transferred to commercial air transport, however, has not been similar. Airlines are still very much national entities. Some airlines have undergone internal re–organisation that preserve advantages in designation. For example, Virgin Australia in February 2012 announced plans to split its corporate structure into domestic and international operations[3]. Doing so would allow foreign investment (by airlines or other parties) into the domestic operations (Virgin Australia Holdings) which, similar to New Zealand's policy, have no foreign ownership restrictions. The international arm of the company, Virgin Australia International Holdings, will operate international services under existing Australian air rights which require compliance on foreign ownership investment (not more than 49% foreign ownership).

SUBSTANTIAL OWNERSHIP & EFFECTIVE CONTROL

One of the most common discretionary criteria relating to ownership and control is a test as to whether nationals of the designating State hold "substantial ownership and effective control" (SO&EC) of the airline being designated. The practical definition of "substantial" can be explored further. The ICAO *Manual on the Regulation of International Air Transport* suggests that

> *States generally focus on the amount of ownership of the air carrier held by certain parties, usually considering that more than 50 per cent of the equity in an air carrier constitutes "substantial ownership". States having a national law or regulation that specifies the percentage of equity in a national air carrier that may be held by non–nationals consider that ownership in excess of this specified limit is "substantial".*

In this sense, a "majority" can be considered "substantial" Lelieur (2003). That said, Hocking (2011) argues that, for instance, even 40% may be considered "substantial" in some circumstances. States will permit foreign ownership in their designated airlines to the point where the status of substantial ownership with nationals is not threatened or to where limits established by national policy are met. Further, States will only allow foreign ownership up to a point which does not threaten existing bilateral arrangements which require "substantial ownership" to be present. Varying limits of foreign ownership exist around the world (Table 1).

[3] It is worth noting that Qantas announced similar intentions in May 2012.

Table 1: Foreign ownership limits.

Country	Limit
China	35%
Japan	33%
Korea	50%
Singapore	None
Thailand	30%
Canada	25% voting equity (15% single)

As indicated above, control refers to operational oversight of a carrier, and thus the notion of "effective control" is designed to test whether, put simply, decision–making within an airline is vested with nationals of the designating State. The ICAO *Manual on the Regulation of International Air Transport* offers guidance on interpretation:

> *"effective control" may be exercised by different entities depending on the activity of the air carrier. For example, air carrier management may exercise effective control over certain operations, such as opening a new route, while financial entities, shareholders or a government might exercise effective control for the purpose of increasing the air carrier's capital, merging it with another air carrier or dissolving the company.*

The question, then, is whether an airline that is majority owned by nationals of a State but effectively controlled by non–nationals can be considered a designated carrier where *both* substantial ownership and effective control are required to be met. An example serves to illustrate this point. Tiger Airways Australia operates domestic services in Australia, but cannot operate trans-Tasman services because it is wholly owned by Tiger Airways Holdings in Singapore. This example does not pass the test for effective control of Australian airlines operating between New Zealand and Australia[4].

To be assured to access to air rights, an airline would need to be able to pass a nationality "test" of an airline would need to satisfy both ownership and control, particularly in those ASAs where such

[4] New Zealand has exchanged Seventh Freedom rights with Singapore, which would permit trans–Tasman operations by a Singaporean airline without the service having to originate in Singapore. The Australia–Singapore ASA does not permit this.

criteria are required. Such tests, especially with reference to control, may be inherently subjective, and thus various principles may be adopted. These include (1) an examination of corporate structure and relationships at upper management levels and the Board to determine where power and influence may rest, (2) a review of the structure of voting interests on a controlling Board, or (3) a detailed assessment of the "means of production" (Lelieur, 2003).

Lelieur (2003) suggests that there are three reasons why there may be ambiguity in the interpretation of what constitutes "effective control": (1) there may not be alignment between national designation and that which are used in bilateral agreements (thus enhancing the potential for numerous interpretations), (2) a case–by–case approach may be more useful in the implementation of national policies, and (3) ownership and control are, by definition, separate, such that an airline may hold majority ownership in another airline but may, in fact, have no controlling interest.

ALTERNATIVE APPROACHES

Alternative ownership and control models have emerged in the past few years. The most recent is the use of principal place of business (PPOB) and effective regulatory control (ERC) criteria[5]. The origins of this concept are chronologically recent (2001) and follow a trend in liberalisation. PPOB removes shareholding nationality as a criterion and, instead, introduces logistics and geography, such that

> "*principal place of business may be predicated upon the following: the airline is established and incorporated in the territory of the designating party in accordance with relevant national laws and regulations, has a substantial amount of its operations and capital investment in physical facilities in the territory of the designating party, pays income tax, registers and bases its aircraft there, and employs a significant number of nationals in managerial, technical and operational positions*" (ICAO, 2004, 4-5).

[5] Place of incorporation (POI) can also be included.

With respective to effective *regulatory* control (as opposed to effective control), criteria may include situations where

> "*the airline holds a valid operating licence or permit issued by the licensing authority such as an air operator certificate (AOC), meets the criteria of the designating party for the operation of international air services, such as proof of financial health, ability to meet public interest requirements, obligations for assurance of service; and the designating party has and maintains safety and security oversight programmes in compliance with ICAO standards*" (ICAO, 2004).

In general, ICAO's Secretariat favours the gradual move toward the PPOB and ERC model. New Zealand was at the forefront of adopting the PPOB (in place of "substantial ownership") and more recently ERC criteria, with the New Zealand — Thailand ASA from 1987 among the country's first[6]. Effective regulatory control appears in agreements with, for example, the European Union, the United Kingdom and Vietnam.

A further approach, and one which has applicability in developing countries, is the "community of interest" criterion. Here, ownership and control may be vested to nationals of a State which is not a signatory to an ASA under which the airlines wishes to operate. In instances where developing countries lack significant government and private equity capital to ensure consistent air services and connectivity, this approach can be critical. The European Union is an example, as the community interest concept has replaced substantial ownership and control held by nationals.

Despite these options, their implementation on–the–ground is still relatively thin. A problem arises when not all bilateral partners on an international airline's network have agreed to liberalise ownership criteria; the remaining uncertainty with a few partners the airline may still not be able to access greater third–country equity capital. In fact, while global trends toward liberalisation of access have taken place, more restrictive control provi-

[6] Others include, for example, India, South Africa, Singapore, most of the Pacific Island nations, Malaysia, the UAE, Chile, the European Union and Hong Kong.

sions have been installed in some instances. The United States Congress, for example, instituted in 2003 measures to require U.S.–citizen control (via voting interest) over US airlines.

THE THIRD–COUNTRY CIRCUMVENTION PROBLEM

It is useful to review the conditions when ownership of a foreign State's airline may not vested in nationals of that State. Hocking (2011), for instance, suggests that "*Obvious concerns arise, for instance, where foreign shareholder is in a position to influence the board of directors, either by direct appointment powers or by special relationship*", or "*...where a foreign shareholder airline acts as an aircraft lessor on certain conditions, or where there is close integration between booking, reservation or other technical systems.*"

From an international bilateral trade perspective, a clear benefit from restrictive ownership criteria is the prevention of third countries (more specifically, their airlines) from establishing proportionately higher ownership shares in airlines designated by States with whom another State may hold an ASA. By way of an example, suppose State A and State B negotiate restricted third/fourth Freedom access. State A also has an "open skies" agreement with State C. State A subsequently becomes concerned because State C relaxes ownership restrictions to the point where, while still within limits specified in the ASA, nonetheless conveys advantages to, say, a State B airline who chooses to invest State C's airline. Doing so, as Lelieur (2003) notes, could allow State B to benefit from the bilateral agreements signed by State C. This was one of the issues at stake with respect to Singapore Airlines (SQ) wishing to increase its equity in Air New Zealand to 49% in 2001. New Zealand's other bilateral partners, it was argued at the time, could question "substantial" ownership if SQ were to hold a large number of shares, particularly when the airline would derive financial benefits from New Zealand's traffic rights with a third country with whom Singapore may not hold similar traffic rights.

The third–country problem potentially poses a threat to liberalisation beyond traffic rights. A State may be reluctant to liberalise ownership criteria because it may subsequently lose the use of traffic rights (which would likely not allow for such liberal ownership of a designated carrier). As a result, the speed at which one State wishes to liberalise the ownership provisions it applies to its own airlines is dictated ultimately by the speed at which its bilateral partners are also willing to liberalise ownership provisions for their own carriers.

THE NATIONAL OWNERSHIP QUESTION

Beyond the obvious reason of ensuring access in light of ASA conditions, there are several reasons why a State may wish to ensure its carriers remain "substantially" owned by residents or citizens:

1. *National branding.* Airlines are often seen (and positioned) as a symbol of national prestige and, consequently, political and economic independence (Lelieur, 2003).
2. *Essential air services and social welfare gains.* Air services assist with tourism flows and international business linkages in an increasingly globalised world. The lack of viable commercial arguments for service initiation or continuation is often reason enough to consider government investment in air services. A net benefit test can be used as a wider macroeconomic tool to determine the social welfare gains through nationally–held carriers, as opposed to externally by foreign shareholders for whom consistency of connectivity and accessibility does supersede profitability. To some extent, the desire to ensure accessibility and connectivity, thus enhancing social welfare and ensuring trade flows of services and goods, forms the rationale behind government ownership, underwrites and re–capitalisation of several major international carriers.
3. *Access protection in difficult economic times or emergencies.* There is an argument that substantial national ownership will help ensure access and connectivity are protected in the face of endogenous economic threats and/or during a national emergency.

POLICY SCENARIOS FOR NEW ZEALAND

Ownership of NZ–designated international airlines

Governments may elect to treat ownership and control criteria differently for domestic–only airlines and those carriers which service international ports. New Zealand and Australia are rare examples of countries that permit foreign ownership of domestic airlines (what is called Ninth Freedom access). At present, airlines offering domestic–only services are permitted to be 100% owned by foreign nationals, but must retain effective regulatory control within New Zealand (such that a New Zealand Air Operators Certificate, covering safety and security matters, must be held). However, under New Zealand's 1998 international air transport policy[7], airlines wishing to be designated by the New Zealand Government and offer *international* services must have majority ownership and effective control vested with New Zealand nationals. As a matter of policy, a single foreign airline may own no more than 25% of a New Zealand airline and, in aggregate, no more than 35% of a New Zealand airline may be owned by foreign airlines[8]. The New Zealand Government would not designate an airline unless it meets these criteria, even if under a particular ASA the bilateral partner could not challenge the airline on the basis of third–country ownership.

At present, Air New Zealand is functionally the only New Zealand designated international commercial airline currently offering services to and from New Zealand[9] New Zealand airlines Airwork and Vincent Aviation have been licensed to undertake international services but currently only operate within New Zealand and within Australia using New Zealand air rights. Air New Zealand's national ownership and control are preserved by the international air service licence it is issued by the Minister of Transport under the Civil Aviation Act (1990) and the Kiwi Share, which functions as a single special rights convertible preference share held by the Crown[10] but overseen by the Minister of Transport. The airline has on issue over one billion Ordinary Shares which are traded publicly and of which the New Zealand Government (in addition to the single Kiwi Share) holds slightly more than 73%[11]. Importantly, the Kiwi Shareholder has substantial authority over many operational and regulatory aspects of Air New Zealand. In the airline's Constitution[12], the Kiwi Shareholder must provide consent for any and all changes to the airline's name, place of incorporation, principal place of business, head office location, and various legal and regulatory reporting requirements. The Air New Zealand Constitution also provides the Kiwi Shareholder with the authority to enforce the definitions of "New Zealand citizen" and "New Zealand national" with respect to ownership. Any shareholding by another airline requires the Kiwi shareholder's approval and no one foreign shareholder may hold more than 10% of the company's shares without the approval of the Kiwi shareholder.

Against this background, two broad policy scenarios can be constructed:

Scenario 1: Status quo *with respect to ownership and effective control of New Zealand–designated airlines undertaking international services.*

1. The capital cost of establishing an international airline is substantial, and given the strength of Air New Zealand and the competition it faces from foreign carriers, it is perhaps not surprising that it has been nearly 20 years since another international airline operated internationally under New Zealand traffic rights[13]. The *status quo* would require a substantial amount of New Zealand–based equity capital, and given the current state of the industry on an international level, the return on that investment may not be seen to be enough to justify investment. As such, under *status quo*, it is likely for the foreseeable future at that Air New Zealand will remain the dominant designated passenger international carrier.
2. With substantial ownership in Air New Zealand held clearly by the Government of New Zealand, combined with current restrictions on foreign capital holdings,

[7] `http://is.gd/c9oU5T`

[8] `http://is.gd/IzOE2X`

[9] Australian–owned Jetconnect and Virgin Australia (NZ) are safety certificated as New Zealand carriers, but under current New Zealand policy cannot be designated as New Zealand international airlines.

[10] The Kiwi Shareholder is Her Majesty the Queen in right of New Zealand. No airline is permitted to own shares in Air New Zealand without first securing permission of the Kiwi Shareholder. Foreign entities and individuals investing less than ten percent do not require Kiwi Shareholder consent.

[11] The current Government is committed to a share sell–down that would see it still maintaining a majority stake in the company.

[12] http://www.airnewzealand.co.nz/constitution

[13] Kiwi International Air Lines, based out of Hamilton.

a *status quo* scenario could function as a barrier to entry for competitors. International airlift to New Zealand thus becomes a balance between growth opportunities for New Zealand–based airlines and market attractiveness for foreign airlines that bring network power and economies of scope.

3. Paradoxically, a *status quo* approach could limit Air New Zealand's fleet expansion and re–tasking given comparatively smaller amounts of equity capital available within New Zealand. It will likely continue to leverage strategic alliances and joint ventures to facilitate strategic penetration into new markets to counteract this, but such efforts will typically require clearance from various New Zealand regulatory authorities (either the Ministry of Transport or the Commerce Commission).
4. The current arrangement of a dominant Kiwi Share removes any risk that Air New Zealand's ownership becomes the basis by which its access to foreign States is refused on the grounds of failure to meet stated ownership and/or control criteria. A *status quo* approach cements New Zealand's adherence to the criteria contained within many bilateral agreements with other countries, such that ownership and effective control will not likely be questioned.

Scenario 2. *Allow a greater ownership share in New Zealand–designated airlines to be vested in foreign airlines and/or entities.*

This would be a radical move away from national ownership (in varying degrees) and carries with it significant political considerations in the case of Air New Zealand. Further:

1. Additional foreign ownership could introduce additional sources of equity capital in the future. This is perhaps most critical in an capital–intensive industry such as commercial aviation, and may actually serve to enhance competition.
2. If similar ownership allowances are not afforded to Air New Zealand, consideration must be given to the airline's future competitiveness.
3. Such a position could set in motion challenges by some bilateral ASA partners if ownership and effective control criteria (usually SO&EC as discussed above) exceed accepted maximums[14]. In other words, the loss of substantial ownership — again, with the word "substantial" not entirely achieving universal meaning in aeropolitics — could restrict any New Zealand–designated international airline's operations to partners who have agreed to less restrictive ASA ownership and control criteria. The value of this will depend on the shape of airline's ownership, and may be rectified by the re–negotiation of certain ASAs where it is clear the bilateral partner would allow ownership shifts. New Zealand has made considerable progress in negotiating the removal of the "substantial ownership" criterion from its air services agreements (notable exceptions are with China, Fiji and Japan) but most New Zealand agreements still include the "effective control" criterion[15].
4. This also has considerable implications for the third–country circumvention problem as discussed above, with foreign airlines conceivably benefiting financially from investments held in the airline(s) of other States with whom New Zealand has reciprocal arrangements.

Foreign airline operations

On the basis of the strong economic impact of international air services, questions arise over whether local policy adjustments can be made in the area of airline ownership and control which may incentivise international airlines to offer services to New Zealand. Two scenarios can be identified. One considers consecutive cabotage rights, or some variation, for domestic services by international airlines. The other considers third–country airline access to New Zealand.

Scenario 3. *Permit Eighth Freedom (consecutive cabotage) to be exercised by international carriers.*

[14] For historical interest, a July 2001 Memo (`http://is.gd/WAb5O5`) from the then Secretary for Transport for New Zealand outlines the "aeropolitical acceptability" of increased foreign ownership in Air New Zealand.

[15] See http://is.gd/WAb5O5

Eighth Freedom[16] operations — sometimes called "tag end" services — may be permitted two ways. First, provision may be granted formally in an ASA or its associated Memorandum of Understanding, where such operations are specified explicitly (including routes and capacity). With this option, an airline undertaking Eight Freedom operations does so under the auspices of the ASA. For instance, an airline designated by Thailand would be allowed to undertake domestic services from Auckland to Christchurch after originating in Bangkok (Figure 1).

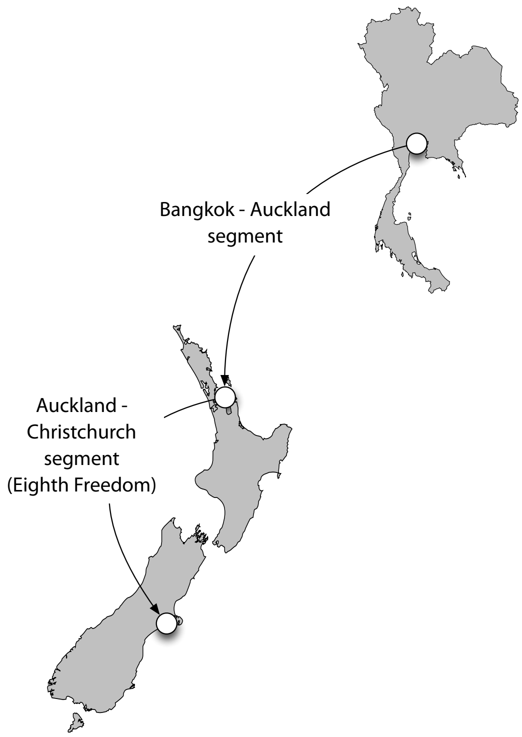

Figure 1: *Hypothetical Eighth Freedom operations within New Zealand by a Thailand–designated airline.*

New Zealand has signed arrangements with Australia, Brunei, Chile, Singapore, Ireland and the United Kingdom allowing their designated airlines to undertake Eighth Freedom operations within New Zealand. None, with the possible exception of Jetstar[17], do so currently.

The second manner in which international access to domestic operations is permitted is the economic deregulation of New Zealand domestic services to permit majority or full foreign ownership. Here, an airline operating domestically would need to satisfy New Zealand (or, in limited circumstances, Australian[18]) safety and oversight requirements[19], but may be majority owned and controlled by foreign nationals. At present, New Zealand permits Ninth Freedom operations through domestic deregulation of ownership. International airlines (or consortia) are thus able to establish — through acquiring New Zealand Air Operator's Certificate — a domestic airline that uses New Zealand–registered aircraft, although same–service linkages between New Zealand international ports carrying purely domestic passengers and cargo are not possible if, as is usually the case, they are prohibited in air service agreements.

Having outlined the nature of *how* Eighth Freedom traffic rights may be exchanged in ASAs, to be considered next is *why*. One might conclude that a logical derivative of New Zealand's domestic deregulation is the relaxing of Eighth Freedom restrictions, either reciprocally or unilaterally. In such an instance, New Zealand may permit (through, for example, revision to an existing ASA Memorandum) a carrier to operate to a secondary port after initially stopping in, for instance, Auckland[20] and carry domestic traffic between the two New Zealand airports. It is possible that, should such routings be permitted, larger international carriers with significant time on the ground in Auckland could see an opportunity. Some foreign airlines have operated previously between Auckland and

[16] The Eighth Freedom (also knowns as "consecutive" cabotage) is the right or privilege of transporting cabotage traffic between two points in the territory of the granting State on a service which originates or terminates in the home State of the foreign airline or (in connection with the so–called Seventh Freedom) outside the territory of the granting State (ICAO, 2004).

[17] Jetstar's operations within New Zealand can be classed as either Eighth or Ninth Freedom, depending on the perspective taken with respect to the use of Australian aircraft within New Zealand.

[18] New Zealand and Australia have mutual recognition of aviation safety certification.

[19] These may be considered critical when the foreign State designating the airline wishing to commence services does not adhere to established protocols.

[20] Qantas' operations within New Zealand through its subsidiary Jetstar are possible as it qualifies as a SAM (Single Aviation Market) airline under the New Zealand – Australia open skies agreement.

Christchurch, but without the right to carry domestic passengers.

Obviously such a policy shift could have significant consequences for the shape of the domestic and international competitive landscape in air services. First, while the New Zealand domestic market was deregulated 25 years ago, existing competition on the main trunk routes within New Zealand is still limited to Air New Zealand and Jetstar following the withdrawal of Pacific Blue (since re–named to Virgin Australia). Before a decision is made to pursue this scenario, a net benefit test would need to identify multiple parameters (including the measurement of variable interactions), including the likelihood of a foreign carrier providing domestic services on consecutive cabotage, the response of existing carriers already providing domestic services and the effect on international capacity by all carriers.

Second, some international airports within New Zealand (e.g., Christchurch) may advocate for a case–by–case approach to the granting of consecutive cabotage in lieu of (or perhaps in addition to) active advocacy for their own non–stop international services (where the latter are deemed not commercially viable). For some international carriers, such an arrangement may be opportune where non–stop, thin–route operations to secondary airports in New Zealand would have contributed less to network profitability than domestic services operated under consecutive cabotage. For example, assuming commercial viability, the loss of Air Asia X services to Christchurch could be offset by air rights allowing the airline to operate Malaysia—Auckland—Christchurch cabotage services. To this end, a potential consequence to this scenario is the further emphasis on Auckland as the primary gateway international services.

Third, to be considered is the viability of secondary ports within the country (e.g., Dunedin, Palmerston North, Hamilton, Rotorua, Queenstown) which have, at one time or another, had at least trans–Tasman services. It is recognised that smaller, thin routes can contribute positively to an airline's network profitability. It is not entirely clear, however, whether there exists a business case for international carriers to operate to these ports under consecutive cabotage. It is worth noting that Australia recently (2009) granted additional landing rights to international carriers into Sydney on the condition that such flights operate as tag ends to an initial stopover at secondary ports such as Darwin. Further, code–share arrangements between Etihad and Virgin Australia and Qantas, for example, mean that such operations using Etihad aircraft would be inefficient.

The New Zealand case is somewhat different given the liberal approach to inbound international capacity in existing ASAs. Where commercial rationale cannot be found for international carriers to undertake consecutive cabotage, code–share arrangements with domestic carriers remain an option. For example, United Airlines code shares on Air New Zealand domestic services to carry its international passengers and Singapore Airlines has, in the past, code shared on its Star Alliance partner Air New Zealand's services to New Plymouth. However, Skyteam airlines do not currently have a domestic partner in the New Zealand market, so they may be more interested in this scenario. Another option is direct underwrites or risk–sharing ventures by local governments and/or airports in secondary destinations.

Before we leave this discussion of Eighth Freedoms for foreign carriers, there are two additional operational options that could be made available absent full provision of consecutive cabotage. The first is *own–stopover* carriage, which refers to the right of an airline to discharge and take on its own international traffic that is destined for another (domestic) city after a stopover. For example, Australia has offered such rights to international carriers on an unrestricted basis since 1999, and they have been used, at one time or another, by airlines such as Cathay Pacific, Thai Airways and United Airlines. The second option would permit foreign airlines to carry *internationally–ticketed passengers* within New Zealand. In other words, any passenger arriving into New Zealand on a ticket purchased in their (foreign) country of residence could be carried on a domestic flight operated by another international carrier.

New Zealand's generally favourable approach to the granting of Fifth Freedom rights reveals a willingness to adopt policy stances that seek to maximise international access. Given its geographic position, an investigation of the viability of agreeing to *limited* or *case–by–case* (where significant net benefits can be demonstrated) “tag end” cabotage services may be prudent. More widely, approaching the issue of Eighth Freedom will likely require a review of how New Zealand approaches ASAs[21]. There is even the wider question of whether such an approach fits under a balanced reciprocity mandate for the negotiation of air services, particularly when most trading partners are not yet likely to grant similar access to New Zealand designated airlines. In other words, such an approach would see New Zealand not seeking reciprocal rights as it has already done with respect to Ninth Freedom traffic rights.

Scenario 4. *On a case–by–case basis, permit bilateral partner airlines with “substantial” third–country capital holdings to exercise traffic rights.*

The objective of this policy scenario would be to more proactively seek alternative ownership and control criteria in future ASA negotiations as the European Commission has been doing in recent years. New Zealand would continue to seek combinations of PPOB, POI and ERC criteria with current and future bilateral partners. This would allow safety oversight to remain with New Zealand’s bilateral partners, but permit third–country or airline ownership of partner–designated carriers. For existing ASAs, New Zealand could choose not to dispute increased third–country equity holdings in the airlines of existing bilateral partners, as New Zealand did when Aerolineas Argentinas was Spanish owned. This scenario posits requisite effective *regulatory* control by a bilateral partner, but allows the ownership links between the airline and the partner to be severed. A potential risk with this policy shift would be the “flags of convenience” problem, particularly with respect to liability.

CONCLUSION

The above discussion can be framed by several wider policy contexts. These could feasibly guide discussions regarding domestic and international airline ownership which touches New Zealand:

1. What is the desired shape of the competitive environment in New Zealand with respect to air services (both domestic and international)?
2. Further to this, with an objective function seeking to maximise social welfare, to what extent should the New Zealand Government take into consideration the interests of Air New Zealand as a commercial entity in the consideration of the policy scenarios outlined above?
3. Where does the desire for balanced reciprocity of opportunity and possibly benefits for New Zealand airlines in the negotiation of air services sit with respect to the desire for maximised connectivity and accessibility? This is certainly a question to be considered more generally, but it is very much relevant in the context of offering a policy environment in which foreign carriers hold interest in operating services to, and potentially within, New Zealand.

[21] A Protocol to the MALIAT (`http://www.maliat.govt.nz/`) already provides one means by which other countries can exchange such eight freedom rights with New Zealand

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ADDENDUM: THE INTERNATIONAL AIR TRANSPORT POLICY REVIEW DISCUSSION DOCUMENT

This document was written prior to the release by the Minister of Transport of the *International Air Transport Policy Review Discussion Document* in May 2012[22]. With respect to ownership and control, two relevant items are contained in the Discussion Document, including:

1. For designated airlines undertaking international services, “*removal of the policy limits of 25 percent ownership by any one foreign airline or 35 percent by foreign airlines in total*”.

[22] Available at `http://www.transport.govt.nz/`

2. As well, "*considering, on a case-by-case basis, designating New Zealand-based airlines whose ownership and control structure is consistent with the bilateral arrangements with all the markets it proposes operating to or where the risk of operating authorisations not being accepted is assessed as small.*"

Item 1 correlates with Scenario 2 discussed above, while item 2 correlates with Scenario 4. Both are consistent with New Zealand's recognition of the importance of international airlift, the business environment in which commercial airlines operate and the country's geographic position.