



(Outside of Your Medicine Cabinet, Long After You Brush)

Airline deregulation changed the game for U.S. airline pilots. It triggered major shifts in the structure of the U.S. airline industry. Nearly 35 years later, the peril for U.S. airline pilots in the post-deregulation era continues with new challenges as airlines go ever more global.

Global airline alliances now range from simple code-sharing to full revenue-/profit-sharing joint ventures. The global reach of today's airline networks has increased the potential for U.S. and Canadian airlines to have pilot bases in foreign countries. Liberal air services agreements have opened the door to competition from airlines owned by and/or supported by governments that make promoting strong and competitive airlines a priority. Continuing efforts by a broad range of constituencies to erase the limits on foreign ownership of U.S. airlines mean that the landscape could change even more radically in the future. All of these developments dictate that pilots must work to achieve the strongest possible contractual definitions of the "scope" of the international work they are to perform.

Deregulation sets the stage

In 1978, the Airline Deregulation Act set off a dramatic shift in how U.S. airlines could—and would—do business in the de-

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cadecades to come. Deregulation brought the end of Civil Aviation Board-established limited entry routes and heralded hub-and-spoke networks that relied on connecting passengers to and from many points. And it permitted airlines vastly greater flexibility in how they structured their businesses.

Many airlines quickly took advantage of these new freedoms. By adapting to the hypercompetitive climate, they realized unprecedented growth. However, the new post-deregulation paradigm made it easier for managements to attempt to subvert union pilots who had invested their careers in helping to build their airlines' success. In particular, some managements sought to circumvent union contracts through practices such as double-breasting, by which managements would create a non-union subsidiary and outsource to nonunion labor flying that had traditionally belonged to the company's union pilots.

Open Skies

In 1993, the U.S. began pursuing Open Skies agreements to expand international passenger and cargo flights by reducing the government's role in the airline's decisions about routes, capacity, and pricing. Since then, the U.S. has signed Open Skies agreements with more than 100 partners. More than 70 percent of international departures from the U.S. now fly to Open Skies partners, but only one Open Skies agreement—with the

European Union—contains a labor article to safeguard U.S. aviation jobs.

Global airline alliances

In the past three decades, international alliance agreements have also emerged and evolved with the stated goal of allowing airlines to expand networks and compete more effectively in the global marketplace. These agreements have ranged from code-sharing to coordinating specific operations such as pricing, routing, and sharing facilities to full revenue-sharing or profit-sharing joint ventures. Each of these arrangements poses scope challenges for pilots. However, the revenue-/profit-sharing joint venture has come to dominate much of the international market as far as U.S. airlines are concerned and presents the greatest challenge.

Airlines from the major alliances—United and Lufthansa from Star, Delta and Air France/KLM from SkyTeam, and American and British Airways from oneworld—have each implemented a fully integrated joint venture (FIJV) covering transatlantic services. United/All Nippon Airways and American/Japan Airlines have similar arrangements that cover much of the transpacific market as well. The involved airlines have received antitrust immunity from the U.S. Department of Transportation (DOT) for these FIJVs, and the DOT, in granting that immunity, has essentially required that the covered operations be integrated to the fullest extent possible (“metal-neutral,” in the words of the department).

Metal-neutral joint ventures

A metal-neutral arrangement, which the DOT defines as an alliance arrangement in which the partners are “indifferent as to which of them operates the aircraft when they jointly market services,” raises significant job risks for flight crews. These arrangements are fundamentally different from traditional code-share arrangements. In the usual code-share arrangement, an economic incentive exists for an airline to fly its own airplanes, but that incentive is eliminated in a metal-neutral arrangement. If airlines are indifferent as to which partner flies a particular route, they may be indifferent as to which employees operate those services as well. Taken to its extreme, such an agreement could result in an airline receiving a significant portion of revenue generated by the joint venture operations but doing none of the actual flying.

All these developments and others underscore why scope is a vital issue to pilots in the area of international flying. We have already seen disturbing examples of what can go wrong.

What can happen without adequate international scope protection

FedEx establishes a pilot base in the Philippines

In the mid-90s, FedEx management took the position that pilots based outside of the U.S. should not be afforded U.S. labor law protections or representation under a collective bargaining agreement. Had FedEx been successful in advancing this position, it would have given the company significant

flexibility in staffing its aircraft with nonseniority list pilots on international routes.

FedEx management asserted that pilots based at Subic Bay in the Philippines were not part of the “craft or class” of FedEx pilots that ALPA represented under the Railway Labor Act (RLA).

In January 1995, ALPA filed suit in U.S. District Court to compel FedEx to bargain with ALPA over the opening of the Subic Bay domicile and related issues, and to cease attempting to undermine ALPA as the exclusive and rightful representative of all FedEx pilots by excluding Subic Bay pilots from the bargaining unit. ALPA maintained that management’s refusal to negotiate the working conditions of Subic Bay pilots violated FedEx’s duties to meet and bargain with ALPA regarding all terms and conditions of employment for FedEx pilots as required by the RLA.

In a letter to FedEx management, Capt. Joseph DePete, then FedEx Master Executive Council (MEC) chairman, noted that other U.S. airlines for many years had flown international routes from overseas domiciles and routinely bargained with ALPA and recognized that their ALPA contracts applied to all their pilots. He reiterated that the lawsuit did not seek to stop or delay the opening of the Subic Bay base, but was filed to ensure that FedEx pilots’ interests and careers were fairly protected.

Beyond the immediate legal and representational issues, the FedEx pilots pointed to possible future plans by the company to hire foreign nationals to fly these or other international routes. In 1994 testimony before the U.S. House Subcommittee on Aviation, the FedEx company spokesperson stated, “You could have a mix. I simply can’t speculate as to who—as to what pilots may be on board. I suppose you could actually have Philippine pilots, pilots from Australia, etc., located out of a Philippine hub.”

Subsequently, and at least in part as a result of the lawsuit that ALPA brought over the Subic Bay issue, the FedEx pilots worked out an agreement that was memorialized in the collective bargaining agreement, which resulted in FedEx treating the Philippine-based pilots in the same way as those who are domiciled in Memphis, Tenn. Since the Subic Bay agreement, FedEx has opened pilot bases in Hong Kong and Cologne. In both cases, the company has agreed to recognize ALPA as the representative under U.S. labor law of the pilots based there and negotiated with ALPA concerning the benefits associated with assignment to those bases.

Atlas establishes a pilot domicile in London

Similar foreign pilot domicile issues were raised in 2000, when Atlas Air Cargo established a wholly owned subsidiary—Atlas Air Crew Services (AACS)—at London Stansted Airport for pilots who were to fly some of the international wet-lease or crew-and-aircraft leasing services that Atlas operated for foreign airlines. According to Atlas, these pilots would be on their own seniority list and have wages and working conditions unilaterally set by the company.

ALPA sued Atlas, claiming that establishing AACS violated the status quo provisions of the RLA. Atlas then filed its own

suit against ALPA, claiming that the pilot work to be done for AACS was outside the jurisdiction of the RLA. Atlas proceeded to staff AACS with a mix of pilots from the Atlas pilot group and new hires.

After more than a year of litigation and negotiations, ALPA and Atlas reached an agreement designed to limit the AACS operation and eventually bring the AACS pilots under the Atlas pilots' collective bargaining agreement. Atlas agreed to set up a branch office in the UK for the purposes of employing the Stansted-based crewmembers, and AACS pilots' employment would be shifted to that office. The number of

airline, holding 42 percent of the stock and funding most of the Singapore-owned stock. Three years later, Qantas took a significant ownership stake in Vietnam's Pacific Airlines and, in 2008, rebranded that airline as Jetstar Pacific, which it operates as a joint venture with Vietnam Airlines. Most recently, Qantas has started up Jetstar Japan as a joint venture with Japan Airlines and Jetstar Airways in Australia and New Zealand (wholly owned by the Qantas Group). Plans are under way (subject to regulatory approval) for the start-up of Jetstar Hong Kong, a partnership between China Eastern Airlines and the Qantas Group.



The goal must be to secure U.S. pilots' international flying in the face of stiff competition from foreign airlines, while giving U.S. airlines an opportunity to compete and prevail in the global marketplace.

Collectively, the Jetstar airlines operate approximately 3,000 flights a week to 60 destinations in 17 countries, employing approximately 80 airplanes and accounting for approximately 20 percent of the airline revenues of the Qantas group.

The lack of clear job security provisions in the

AACS pilots not on the main Atlas seniority list was capped, with the goal of eventually eliminating those pilots through attrition. The terms and conditions of employment for the Stansted pilots were included in individual employment contracts, and those contracts incorporated the ALPA-Atlas collective bargaining agreement and any necessary modifications required by UK law.

working agreement between the Australian and International Pilots Association (AIPA) and Qantas has permitted Qantas to establish this wide-ranging parallel network. As a result, AIPA has focused its attention in negotiations on job security issues to address the massive outsourcing of flying and is currently in government-required arbitration over the terms of its working agreement.

United sets up a joint venture with Aer Lingus for the Washington, D.C.–Madrid route

On March 29, 2010, the inaugural Washington, D.C. – to – Madrid flight took place as part of a United/Aer Lingus joint venture that allows United to collect a significant portion of the joint venture revenue without using United pilots, United airplanes, or United crews.

Prior to United's reorganization in bankruptcy in 2005, the company's pilots had scope provisions that would have precluded the joint venture from being implemented in this form. These provisions were lost in the Section 1113 contract set-aside process that took place during the bankruptcy.

In early August of this year, United made a decision to end the Washington, D.C. – Madrid joint venture. ALPA welcomed this action and maintained its position that the United pilots who have invested their careers in their company and helped it prosper have earned the opportunity to fly this route.

Qantas sets up a series of Jetstar operations

In 2003, Qantas established an Australia-based subsidiary airline—Jetstar—and the new airline began operating the next year. In 2004, Qantas started Jetstar Asia, a Singapore-based

Conclusion

The current Open Skies regulatory framework, and the prospect of a fiercely competitive future for U.S. airlines against state-backed foreign airlines, underscores the urgent need to define as strongly and precisely as possible the scope of international flying work to be performed by pilots.

To secure U.S. airline industry jobs in today's global environment, we need a domestic business environment that not only provides U.S. airlines with a level playing field to compete internationally, but also champions airline workers directly through the enforcement of labor laws that are designed to safeguard U.S. workers in areas where the U.S. labor market is exposed, such as by Open Skies agreements or any future relaxation of foreign ownership and control laws.

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The next article in a series on international scope will appear in an upcoming issue of *Air Line Pilot*.