

# Law and Policy of Substantial Ownership and Effective Control of Airlines

## Prospects for Change

Isabelle Lelieur

By Dr. Pablo Mendes de Leon

Since the 1980s, when the deregulation and liberalization process started off, national ownership and control of airlines, as well as prospects for abolition thereof, has been a much-debated subject matter. National and international policy makers, commentators and aviation conferences placed the subject on the agenda. Nevertheless, the changes in the regulatory field have been modest. Apart from special arrangements in the European Community and in the framework of the Asia Pacific Economic Co-operation (APEC), bilateral agreements still stick to the traditional nationality criteria for airlines.

Isabelle Lelieur clarifies why this is still so. The author starts by promoting a thesis, namely, that civil aviation is a commercial activity, which is part of worldwide globalization. Hence, she proposes the “total abolishment of the national ownership and control restrictions in order to allow air carriers to evolve in a more liberal environment...”. It is stimulating to read on the first page what the author’s intentions are before examining the analysis of the ways and means to achieve this objective.

She divides her analysis into three steps, that is:

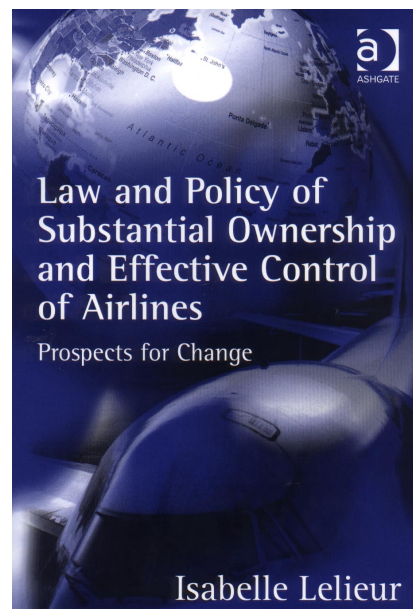
The Paradox of the International Airline Industry: Restrictions on Globalization in an Increasingly Global Market

Justifications of National Restrictions Revisited

Cross-Border Investments Loom on the Horizon: The Steps to be Taken Towards Achieving Liberalization

In my view, Parts 1 and 3 are so closely related that I would have preferred to change the order of the book, so that Part 1 becomes Part 2, and vice versa. Moreover, chapters of Part 1 overlap with chapters of Part 3: the stages towards global liberalization which Ms Lelieur discusses in Chapter 1 of Part 1 are closely related with the three stages which she discusses in Part 3.

This said, the substance contains a wealth of materials, thoughts and references. From that point of view, the book is a useful contribution to the publications, which many authors have made on the subject. Moreover, the timing is well chosen: two years after the attacks of 11 September 2001, calling for measures designed to improve the financial health of the airline industry, about 6 months after the “Open Skies” decision of the European Court of Justice, denying EC Member States to maintain nationality criteria in their bilateral air agreements from an EC law perspective, and about 2 months after the fifth World Air Transport Conference of ICAO, confirming liberalization of nationality criteria at the world wide level. Obviously, it would have been interesting if the author could have applied her postulates to the recent Air France/KLM merger.



The book contains a valuable analysis and information, including an impressive bibliography. Ms. Lelieur has a compelling way of putting her views forward, which she explains in clear language. I would have enjoyed a more detailed discussion on the alternative for the traditional nationality restrictions. Yes, here and there she touches upon establishment, and the danger of “flags of convenience”. Nevertheless, I would have been more enlightened if the themes of “establishment” and “principal place of business” would have received more attention. But even without this discussion, the book remains an interesting and topical work.

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