Working Party of the Trade Committee

ASSESSING BARRIERS TO TRADE IN SERVICES

AIR CARGO SERVICES

Contact: Carole Pellegrino, Tel. (33-1) 45 24 79 56; Fax: (33-1) 45 24 15 39
E-mail: carole.pellegrino@oecd.org
ASSESSING BARRIERS TO TRADE IN SERVICES
AIR CARGO SERVICES

Introduction

1. This paper presents a draft “inventory” of measures affecting trade in air cargo services. It represents the fifth sectoral inventory prepared to date in the context of the Trade Committee’s project “Assessing Barriers to Trade in Services.” The five sectors to be covered in this first phase of the project were approved by the Working Party in June 1998 (document TD/TC/WP(98)35, Extended Project Outline, refers).

2. Hence the paper’s main purpose is to present an indicative list of measures affecting trade in the air cargo sector, rather than to describe the sector per se or analyse broader policy issues such as the sector’s relationship to the General Agreement on Trade in Services (GATS). This ground is well covered in papers produced recently for other fora either distinctly or as part of studies on air transport services. Therefore, the paper aims simply to provide a generic inventory of measures affecting trade in air cargo services, along with some country examples. This is deliberately presented in a format broadly compatible with the draft “Consolidated List” of measures affecting trade in other sectors that is part of the work-in-progress of the Trade Committee services project. This “inventory approach” is thus compatible with the existing Trade Committee mandate for work on trade in services.

3. The paper opens with a brief introduction on definition and GATS coverage/classification issues and the sectoral characteristics of air cargo services; and then presents an indicative list of measures affecting market entry and operations in the sector. At this stage the list is not organised according to the four GATS modes of supply. This sector has very specific characteristics and is specifically regulated compared to the others analysed in the Trade Committee services project so far. Thus, while there is overlap between measures in this sector and those found in the draft “Consolidated List” for other sectors, especially with respect to measures affecting supply under mode 3 (e.g. investment approval, residency

1 The other sectors are: Financial information and advisory services; Environmental services: Wholesale trade services; Retail trade services.
2 See OECD DSTI/DOT(99)1, “Regulatory reform in international air cargo transportation”; WTO S/C/W/59, Council for Trade in Services, “Air Transport Services, Background Note by the Secretariat” and UNCTAD “Air Transport Services: The positive agenda for developing countries.” Report by the UNCTAD Secretariat, TD/B/COM.1/EM.9/2.
3 The initial version of the consolidated list of cross-sectoral measures can be found in TD/TC/SE(99)2; which the Secretariat is in the process of revising.
4 The primary source material used to compile this indicative list for air cargo services is a paper prepared by the OECD Directorate for Science, Technology and Industry entitled ‘Regulatory reform in international air cargo transportation’, which presents a detailed analysis of the air cargo sector (i.e. transportation by air of goods/freight for commercial purposes) and its regulatory framework based on the experiences of the OECD countries. DSTI/DOT(99)1 refers.
requirements), overall, sector-specific measures can be seen to dominate in air cargo services. Indeed, while barriers identified in this sector (traffic rights, licensing requirements, infrastructure access, ownership and control restrictions and nationality/residency requirements) can be viewed as having features in common with barriers in other areas of services trade, their main particularity is due to traffic rights, which fall under bilateral agreements.

**Defining ‘air cargo services’**

4. There does not appear to be a generally accepted definition of air cargo services. A recent OECD study on regulatory reform in air cargo services defines them as transportation by air of goods/freight for commercial purposes, from which mail is excluded. However, mail is carried by commercial air freight/cargo operators; and is included in the UN CPC classification for Air Transport Services, Freight transportation (mail, containerised freight and “other” freight transported by air). The WTO Secretariat has noted that, for the GATS Sectoral Classification List (MTN.GNS/W/120) classification for postal and courier services, the corresponding CPC reference for courier services explicitly excludes courier services for mail by air (which are classified under Air Transport Services). However, the WTO Secretariat has also noted that the CPC does not define “mail” and does not make clear whether this exclusion applies only to “mail” services based exclusively on air transport or to any air transport component of any courier service suppliers’ operations.

5. For its part, the GATS does not provide a discrete definition for “air cargo services”, *per se*. Indeed, as air cargo services form part of the broader commercial air transport services sector, the handling of air cargo services under the GATS is not straightforward. This is because, while the GATS applies to the air transport sector, it does so in a unique and limited way via the GATS Annex on Air Transport Services. The Annex states that the GATS, including its dispute settlement procedures, shall not apply to measures affecting traffic rights, however granted, or (to measures affecting) services directly related to the exercise of traffic rights; with the exception of measures affecting three specified services, to which the GATS does apply. Those three services are aircraft repair and maintenance services, the selling and marketing of air transport services, and computer reservation system (CRS) services. Whilst the Annex provides definitions for these three services and for “traffic rights” (but not for “services directly related to the exercise of traffic rights”), the only reference to “cargo” in the Annex is found within the definition provided for “traffic rights”. The Annex is to be reviewed no later than 2000.

---

5 DSTI/DOT(99)1, which notes that there is no generally accepted definition of air cargo or air freight, and that in fact the terms are used indiscriminately.
7. The provisions of the Annex on Air Transport Services apply to measures affecting air transport services, whether scheduled or non-scheduled, and ancillary services. Air transport services include both those for passengers and freight. The Annex confirms that specific commitments undertaken by Members do not affect members’ rights and obligations under bilateral and multilateral agreements that are in effect on the date of entry into force of the WTO agreement.
8. The definitions in the Annex (Article 6) are:
   (a) “Aircraft repair and maintenance services” mean such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance.
   (b) “Selling and marketing of air transport services” mean opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research,
6. Therefore, as air cargo services are services involving and directly related to the exercise of traffic rights, but are not one of the three specified air transport services to which GATS does apply, the GATS does not presently apply to measures affecting air cargo services. Nevertheless, the Services Sectoral Classification List (hereinafter “W/120”), developed by services negotiators as a guide to scheduling of specific commitments during the Uruguay Round, lists under Air Transport Services the following categories: passenger transportation; freight transportation; rental of aircraft with crew; maintenance and repair of aircraft; and supporting services for air transport. The W/120 classification for Transport Services also lists a category “services auxiliary to all modes of transport” that lists cargo-handling services; storage and warehouse services; freight transport agency services; and other services.

7. The WTO Council for Trade in Services sectoral paper on Air Transport Services notes that, as services related directly to the exercise of traffic rights, air cargo or air freight services are presently outside the scope of GATS (in terms of GATS’ application to measures affecting such services). That study also noted that in W/120, while air cargo services derive from (Provisional) CPC 732 (Air Transport services, Freight transportation) there are other types of services classified in the CPC that may also be directly or indirectly related to air cargo services, as follows:

---

advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions.

(c) “Computer reservation system (CRS) services” mean services provided by computerised systems that contain information about air carriers’ schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued.

(d) “Traffic rights” mean the right for scheduled and non-scheduled services to operate and/or to carry passengers, cargo and mail for remuneration or hire from, to, within, or over the territory of a Member, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged and their conditions, and criteria for designation of airlines, including such criteria as number, ownership and control.

---

9 Article 5 of the Annex states that “(T)he Council for Trade in Services shall review periodically, and at least every five years, developments in the air transport sector and the operation of this Annex with a view to considering the possible further application of the Agreement in this sector.” The Council for Trade in Services has commenced discussion of the procedures for this review.

10 Of course, air cargo services, as well as passenger services, rely on the three “auxiliary” air transport services to which the Annex specifies that the GATS applies. It can also be noted that these three services themselves also rely on or relate to the exercise of traffic rights. Indeed as Article 3 of the Annex regarding these three services is presented as an exception to Article 2 regarding exclusion of GATS application to traffic rights and services related to traffic rights, it seems clear that the intent of the Annex is that those three services are related to the exercise of traffic rights.

11 Members may schedule their specific commitments using W/120-CPC or sui generis classifications or a combination of the two for air transport services.

12 WTO document S/C/W/59, Council for Trade in Services, Air Transport Services, Background Note by the Secretariat, p.15

13 Classes and subclasses:

CPC 7321 and 73210: Mail transportation by air
CPC 7322 and 73220: Transportation of containerised freight by air
CPC 7329 and 73290: Transportation of other freight by air.

14 In CPC Rev. 1, CPC 732 is converted into 662 “air transport services of freight”, and containerised freight (CPC 7322) and other freight (CPC 7329) have been merged into 6629 “air transport services of other freight”. The reason for that is that air transport dedicated containers are not suited for any other kind of
− CPC 734 (Air Transport Services - Rental of aircraft with crew);
− CPC 741 (Services Auxiliary to all modes of Transport - Cargo-handling Services);
− CPC 742 (Services Auxiliary to all modes of Transport - Storage and warehouse services);
− CPC 746 (Air Transport Services - Supporting Services for Air Transport);
− CPC 748 (Services Auxiliary to all modes of Transport - Freight transport agency services);
− CPC 749 (Services Auxiliary to all modes of Transport - Other);
− CPC 7512 (Communication Services - Courier services);
− CPC 83104 (Rental/Leasing Services without Operators - Relating to Aircraft);
− CPC 8868 (Air Transport Services - Maintenance and repair of aircraft).

8. Moreover, according to the WTO paper, some “Other business services” may also be considered relevant to the provision of air cargo services:

− CPC 871 (Advertising services)
− CPC 881 (Technical testing and analysis services)
− CPC 8929 (Franchising services) may include franchising activities in the air transport sector.

GATS and multilateral liberalisation of air cargo services

9. Air cargo services clearly play a major role in facilitating and expanding world trade. However, the means to achieve multilateral trade liberalisation of the sector are not clear. Nevertheless certain services directly related to the exercise of traffic rights, covered by bilateral agreements, such as air cargo services, are affected by measures such as commercial presence, movement of natural persons, remittance of earnings, where the GATS already provides a framework for undertaking specific commitments.

10. Both cargo-only and combined passenger-cargo services are related to the exercise of traffic rights, and, despite the growth of the air cargo activities, roughly three quarters of air cargo is transported by combined passenger and cargo flights. Nevertheless a dedicated air cargo industry has emerged, with distinct operators, customers, services and traffic flows from passenger air transportation. (Developments in electronic commerce, leading to expanded demand for rapid delivery of packages, are also having an impact.) Therefore if a distinction was to be made for purposes of GATS coverage between “cargo-only” services and “mixed” passenger-cargo services, it would introduce a serious competitive distortion between the two types of cargo carriers.

---

transformation. Source: WTO document S/CSC/W/6/Add.5, “A detailed analysis of the modifications brought by CPC Rev. 1 to CPC Provisional, Note by the Secretariat”.

15 OECD DSTI/DOT(99)1, page 17.
Special characteristics of air cargo services

11. At present passenger services account for around 70 per cent of the international market for air transport services, freight around 28 per cent and mail around 2 per cent. The cargo segment of the air transport market is developing rapidly, with growth rates estimated to be higher in the future than that of passenger traffic. Today air cargo services are in the midst of a shift from a “premium” to a “mass” transportation market. While in the late eighties air freightable goods were perishables of all kinds, urgent items or highly valuable goods; at the end of the nineties, the range of air transported products has widened, including now machinery parts, electronics, high tech instruments. To a significant degree this reflects higher volume of trade in these products, global sourcing and just-in-time inventory management. Declining prices for air transportation have also made it feasible in cost-competitiveness terms for many more products to be transported by air. Finally, the growth in air freight compared to other modes is due to wide availability of cheap belly capacity. Air cargo is concentrated on four regional markets (US domestic, Europe-Asia, Europe-North-America, Asia-North America) and inside these regions, on a limited number of city pairs.

12. The main reason for government intervention in the sector is concern for security and safety. Three levels of regulations determine market access and operation in air transport/air cargo services. At the national level, national civil aviation authorities enact safety/security standards that must be met by the service providers both on national territory and abroad, through certification programmes. At the bilateral level, bilateral agreements on air transport services, air safety, and mutual recognition or harmonisation of (national) certificates regulate the sector. At the multilateral level, multilateral organisations, in particular the International Civil Aviation Organisation, provide an international forum for co-ordinated safety/security regulation in the sector. In addition, at national level, the support of “national carriers” can be an important factor in the distinctive nature of regulation regarding traffic rights in the air cargo sector.

Measures affecting trade in air cargo services

13. Five main groups of measures can be identified, as follows: licensing/authorisation; traffic rights (regulated by bilateral air service agreements); infrastructure access rules; investment (ownership and control); and nationality/residency requirements. Preconditions for licensing contain requirements that belong to nationality/residency and investment requirements as well. Ownership, control, registration, investment, and nationality requirements are often tightly linked in practice and therefore difficult to separate analytically. That is why certain measures can be found in more than one group. Some of these measures arise directly from security, safety and quality regulation; while others are more concerned with limiting foreign ownership/participation per se. It is worth noting that measures relating to air carrier licenses, traffic rights, infrastructure access, ownership rules and company control, and nationality and establishment requirements generally apply both to passenger and cargo air transport.

---


17. DSTI/DOT(99)1, pp. 24, 25, 26, 28, 29

18. DSTI/DOT(99)1, p.21

19. The busiest air cargo city-pairs in terms of tonnes carried are Hong Kong China-Tokyo, New York-Tokyo, and London-New York.

20. Council for Trade in Services, Air Transport Services, Background Note by the Secretariat, p.3

21. Source: DSTI/DOT(99)1, unless otherwise stated.
14. In organising the material under these headings, a listing of common types of measures is made, along with some country-specific examples. It should be noted that the term “common” measures does not imply they occur universally. Actually they will vary between countries and in the specifics of application. The purpose is just to organise the material in a useful way; to give trade negotiators a clearer sense of the complex nature of regulation and rules arising from traffic rights, safety and fitness requirements, etc; as food for thought in their preparations for renewed GATS negotiations and the review of the GATS Air Transport Annex.

**Licensing/Authorisation**

15. Licensing is a preliminary requirement for offering air cargo services. An air carrier license granted by the aviation authorities of the country where the carrier is established is the preliminary requirement for offering air cargo services domestically and abroad. Governments usually use some combination of the following criteria to offer licences: technical fitness; managerial and financial fitness; national ownership and control rules; and the professional specialisation of the carrier.  

16. The technical fitness of an air carrier is determined partly on the basis of technical guidelines, but national aviation authorities keep full control (sovereignty) of their technical licensing decisions. Two criteria are especially relevant for cargo operations: stringent technical standards in the area of engine approvals and “safety certification” of air cargo carriers. In terms of managerial and financial fitness, minimum management quality and capital levels are typically required. National ownership and control rules usually concern the place of establishment and distribution of shares and voting rights, and less often the nationality of directors and staff employed by the carrier (see lists of Investment and Residency/nationality requirements). The carrier must meet international and national standards.

Some common types of measures

- Licensing and authorisation to provide services granted only to companies permitted to establish, with licences subject to specific conditions.

- Companies must meet financial and management criteria determined by the government before the license is granted and later they are subject to ad hoc monitoring.

- Companies must be domestically owned and controlled. (See barriers in investment and nationality/residency requirements.)

- Companies may be required to employ national citizens as crew. (See measures in nationality/residency requirements.)

---

22. Licenses can be used as the vehicle for expressing a market access limitation (e.g. a requirement to be domestically owned and controlled, which relates more closely to designation - and application of capacity restrictions - a function of capacity or route schedule restrictions in the Air Services Agreement), as well as conditions which relate to licensing per se (e.g. a requirement to meet financial and management criteria).

23. In the case of the EU countries, the rules for ownership and control have European application. The rules according to which air transport must be the essential activity of the company are a strong point of the regulation, given the particularities of air transport activities. This does not prevent the constitution of multi-modal transport groups through subsidiaries or holdings company.
Some governments may apply capacity regulation, the capacity steering role of licensing increases when carrier certificates are limited to specific operations, routes, capacity, frequency etc.

Some governments may apply supply-demand balance, market equilibrium, and market saturation etc. considerations before granting air carrier licences.

Combined operators may be constrained by sectoral boundaries concerning carrier licensing (“air only” tendency), which hinders the constitution of multi-modal transportation companies.

In some cases, sector specific licensing exists: air licences are granted to carriers specialised in air transportation.

Licences are given to companies that own their own aircraft, or lease aircraft that are registered domestically.

Some governments may limit licensing to specific operations or routes.

Some country-specific examples

The carrier has the financing and management to provide scheduled services with large aircraft (defined as aircraft with 61 or more seats, and a payload of more than 18 000 pounds). Special fitness procedure for all-cargo carriers is the prerequisite for a license. (US)

Uniform licensing policies: specific financial and accounting reports needed to document carriers’ managerial and financial fitness, national authorities are responsible for applying these common standards. (EU)

The operators of all commercial air services in Canada are required to obtain an air operator certificate issued by the Department of Transport to establish that they meet safety and security criteria. Both foreign and domestic air carriers are eligible to obtain an air operator certificate for international services. Only “Canadians” as defined in the Canada Transportation Act are eligible for such certificates for domestic air services. An air operator certificate is a prerequisite for obtaining a licence from Canada Transportation Agency which is a requirement for the operation of all international services and some domestic services. US, Mexican and Chilean operators are eligible to obtain an air operator certificate authorising them to carry out certain commercial speciality air services within Canada under the NAFTA and the Canada-Chile FTA respectively. (Canada)

For UK nationals or bodies incorporated in the UK: automatic authorisation to provide air transport services, otherwise: Secretary of State for Transport may authorise. (UK)

Air transport (international and domestic services) is subject to concessions granted by the Minister of Construction and Transportation. (Korea)

Traffic rights/access to foreign markets

17. As already outlined, the GATS does not apply to traffic rights and air transport services directly related to traffic rights. (Traffic rights, but not transport services directly related to traffic rights, are defined in the GATS Annex on Air Transport). Traffic rights are regulated by bilateral and regional
agreements. Traffic rights determine access to international routes. According to the WTO sectoral paper on Air Transport Services, at present there are more than 3000 bilateral air service agreements in force.\textsuperscript{24} All bilateral air service agreements (ASAs) cover scheduled services, including scheduled cargo services, both in their combined passenger-cargo and all-cargo segments, and most also cover charter services in specific articles or annexes. They are of a reciprocal nature. There is a tendency for unilateral liberalisation of non-scheduled services.\textsuperscript{25} Recently, there has been a tendency for ASAs to liberalise entry and capacity limits in the cargo segment while maintaining stricter control over passenger operations.\textsuperscript{26}

18. Cargo carriers set their rates under a different regulatory framework, in which three approaches dominate. First, total rate freedom applies to and from the United States, which no longer even accepts cargo tariffs filings, and within the EU. In other markets pricing freedom applies to certain routes and certain types of services. Second, regulatory approval of rates characterises, especially, prices outside the US, Canada and the EU. In these cases cargo tariffs are agreed by the designated airlines, either bilaterally or multilaterally (through the IATA tariff conferences) and filed for approval with the governments. If not disapproved, the filed rates may become applicable to all other carriers. Third, in routes to and from the US and within the EU, government approval for IATA agreements usually requires that the tariffs must be in the form of maximum prices and every carrier is free to apply lower tariffs. All in all, there is a tendency towards reduced government regulatory control of cargo pricing. Some OECD Members have dropped tariff filing requirements. For example, New Zealand has 18 agreements where there is either no requirement to file tariffs at all, or any intervention by the authorities is limited to situations in which it is designed to prevent anti-competitive practices.

19. Bilateral air service agreements can be classified as traditional, “predetermined” type (TP); “Bermuda” type (B); “Partially Liberalised” (PL) and “Multiple Point” Open Sky (MOS) agreements.\textsuperscript{27}

Some common types of measures

a. Designation of airlines

Each country designates one single company to operate on the bilateral route (TP)

Each country designates one or several airlines on each route (B)

Multiple designation of airlines\textsuperscript{28} (PL and MOS)

\textsuperscript{24} In the OECD DSTI/DOT (99)1 study, the figure given is 1700.

\textsuperscript{25} About 10 per cent of bilateral ASAs (and 5 regional agreements) address the market access problems of non-scheduled services. Their approaches are the following: 1. Authorising specific types of non-scheduled flights (e.g. humanitarian, all-cargo etc.); 2. Allowing non-scheduled services which do not harm scheduled services; 3. Prescribing which country’s charter rules will apply; 4. Specifying wide latitude for non-scheduled flights; 5. Making no distinction between the authorisation granted for scheduled and non-scheduled services. Today there is a trend towards the integration of non-scheduled services into ASAs. (DSTI/DOT(99)1, pp. 60-61).

\textsuperscript{26} This strategy is employed particularly by countries that want to develop their cargo infrastructures.

\textsuperscript{27} Categorisation is made more complicated by the fact that there is a tendency of governments to mix different model clauses on capacity and tariffs.

\textsuperscript{28} In some cases ownership restrictions have been relaxed (see paragraph 24)
b. Route access

Limited number of points/routes operated by designated airlines as listed in the bilateral’s annex (TP and B)

Free access to designated routes, between specific points. Either departure or arrival points may be left open and unrestricted. (PL)

Open route access - airlines can fly on any route between two states. (MOS)

c. Capacity regulation

Capacity and frequency to be agreed ex ante, or 50:50 split. Inter-airline revenue pool for sharing total route revenue may be required by certain bilaterals. (TP)

There is no ex ante capacity control on each route. (Safeguard: in the form of capacity review clause, if airlines on one party are adversely affected by ex post outcomes.) (B)

No frequency or capacity control. (PL and MOS)

d. Availability of 5th freedoms\textsuperscript{29}

Few 5th freedoms granted. (TP)

Several 5th freedoms may be granted, but total capacity must be proportional to the needs of the main bilateral route. (B)

Extensive 5th freedom rights are granted. (PL)

\textsuperscript{29} 5th freedom is an aviation right:

1st freedom rights grant a foreign carrier the right to fly over the home country without landing.

2nd freedom rights grant a foreign carrier the right to land at specified points in the home country, for purposes of refuelling and maintenance, but not to pick up or disembark traffic (passengers, cargo or mail), while en route to another country.

3rd freedom rights allow a foreign carrier to pick up originating traffic in the home country, for transport to the foreign country in which the carrier is based.

4th freedom rights allow for traffic that was picked up by a foreign carrier outside the home country to be disembarked at specified destinations in the home country.

5th freedom rights (also called beyond rights) permit the foreign carrier to pick up or disembark traffic en route.

6th freedom rights allow the carrier to pick up and put down traffic between foreign states via home state (by combining third and fourth freedom rights).

7th freedom rights grant the right to operate stand-alone services entirely outside the territory of its home state, to carry traffic between two foreign states.

8th freedom is the right of an airline to carry traffic between two points within the territory of a foreign state (cabotage).

Air freedoms are offered on an individual route basis.
Unrestricted 5th freedoms. (MOS)

e. Tariffs and rates

Tariffs and rates must be related to costs plus “reasonable” profit. Approval of tariffs and rates by both governments is required. Airlines are incited or encouraged to use IATA procedures before submitting tariff and rate proposals to their governments. (TP and B)

Double disapproval: filed tariffs become operative unless both governments disapprove. (PL and MOS)

Infrastructure access rules

20. Growing demand for the infrastructure (airports) of the air cargo industry makes certain rules crucial from the point of view of fair competition in the sector. The allocation of slots at congested airports, landing fees, the time/schedule restrictions over airport use, noise restrictions, the quality/pricing/availability of ground handling and terminal services are the most important elements of infrastructure access rules.

21. In a wider context, the quality, speed and efficiency of customs inspection and clearance procedures, their equal availability to all carriers, multiple documentation procedures (e.g. non-availability of simplified and, where relevant, multi-modal way-bills, and of electronic information systems) may all be seen as elements of infrastructure-related regulation that can adversely affect trade in air cargo services. These issues also deserve consideration as impediments to trade in the air cargo sector.

22. ICAO has developed policies concerning e.g. airport charging in order to provide a non-discriminatory basis for all international services.

Some common types of measures

The mechanism of slot allocation in congested airports may favour certain carriers (domestic carriers/ big carriers/incumbents etc.). Most countries’ major international airports’ slots are allocated in inclusive, twice-yearly conferences under IATA auspices. Preference is given to incumbents’ retention of slots in use and to promoting new entry.

Airport use is limited at off-peak hours due to the noise impact problems. Use of certain (older technology) aircraft is limited due to noise regulations.

In some countries, tarmac ground handling and terminal services are an area of monopoly or exclusive supply by the airport authority or by national airlines or by a private provider, involving monopolistic inefficiency and pricing. However this situation varies according to airports, for example in France a number of operators are present since the application of the European directive in this area.

---

30 This problem is relevant for express carriers and combined passenger-cargo carriers.

31 These issues were characterised as serious impediments for air cargo services providers at an OECD workshop on Regulatory Reform in International Air Cargo Transportation held in July 1999.
Some country-specific examples

Ground handling directive approved by the Council in 1996, allows full competition above a certain number of passengers and volumes of cargo per airport. Full transparency, objectivity and equal treatment are prescribed in the processing of applications. The Community Directive of 1993: puts in place a transparent slot allocation system; 50 per cent of slots are allocated to newcomers, otherwise the IATA-system is applied. Time slot sales are not permitted, but slot trades are. (EU)

Slot allocation by the scheduling committee consisting of the airlines under the chairmanship of the Airport Authority. Slot trades are allowed between carriers, sales are not. (Canada)

High Density Traffic Airport Rule - encourages the development of a market for domestic slots in congested airports; lotteries to distribute slots have sometimes had to be recalled due to non-use. (US)

Pricing and trading of slots is not authorised. (EU)

Investment (ownership-control)

23. Regulations on ownership and control act as a precondition for granting the operating license to an air carrier. They are at the centre of carrier licensing. Carriers cannot establish themselves outside their flag states, most often they cannot merge fully with a foreign carrier, they may not attain the minimum efficient scale, and they do not usually have unrestricted access to the international capital market. Investments are restricted. Ownership and control requirements for national carriers are sometimes different for access to their domestic markets from the others for access to international markets. Investment (ownership-control) regulations are intertwined with nationality/residency regulations. Practically all OECD governments apply national ownership and control rules in air transportation; however, parallel with the increasing privatisation of national airlines, prohibitions on foreign ownership are gradually losing importance as a primary entry barrier. Some countries are freeing up ownership restriction. For example, New Zealand’s policy is to allow up to 100% foreign ownership of domestic airlines and it has replaced in 16 agreements the requirement for “substantial ownership” with “principal place of business/place of incorporation and effective control”.

Some common types of measures

Foreign ownership permitted up to a certain value threshold.

Minority foreign ownership in a carrier with dispersed ownership may be prohibited if it is deemed to imply foreign control over the company.

Monitoring the capital and management structure of the carrier, with the aim that the strategic control of the carrier remains local.

No establishment of new business permitted; only minority shares in existing business permitted.

Some country-specific examples

Foreign persons (including foreign airlines) can generally expect approval to acquire up to 49 per cent of the equity in an Australian international carrier (other than Qantas) individually or in aggregate provided the proposal is not contrary to the national interest. In the case of Qantas, total foreign ownership is restricted to a maximum of 49 per cent in aggregate, with individual holdings limited to 25 per cent and aggregate ownership by foreign airlines limited to 35 per cent. Foreign persons (including foreign airlines) can generally expect approval to acquire up to 100 per cent of the equity in an Australian domestic airline, unless this is contrary to the national interest. (Australia)

A foreign investor may possess up to 40 per cent of the share capital of a Swiss air transport enterprise. (Switzerland)

For companies which own aircraft flying the Korean flag (scheduled and non-scheduled), the foreign equity ceiling is 20 per cent of the share of capital (from 2000 the ceiling will be raised to below 50 per cent). The strategic control of Korean carriers must remain local. (Korea)

Free market access within the European Community is available only to “Community air carriers” i.e. an air carrier that is licensed by EU member states, has its principal place of business and registered office in the Community and is majority-owned and effectively controlled by member states and/or nationals of member states. This implies that third country investment in such a carrier must not exceed 49.9 per cent. As well, effective control of an air transport company by Community interests is required. (EU)

Foreign investment in US air carrier businesses is determined on a case-by-case basis. Seventy five percent of the voting stock must be owned by US citizens. The corporate president and two-thirds of the directors must also be US citizens. The air carrier must be found to be controlled by US citizens: where the foregoing numerical criteria are met, this more subjective criterion is subject to case-by-case analysis and foreign beneficial ownership of up to 49 per cent does not necessarily prevent the requisite finding of the US control. (US)

Registration in the German aircraft register is reserved for aircraft which are owned by Germans or by companies having their place of business in Germany or in case of special circumstances by nationals of EU-member states. (Germany)

Nationality/residency requirements for ownership and control of air transport companies

24. As a prerequisite to grant an operating license, aviation authorities require air carriers to fulfil certain nationality and residency requirements. Ownership/control and nationality/residency requirements are linked to each other.

Some common types of measures

Requirement that national citizens are employed as crew.

Requirement that the CEO/president must be a national or citizen of the host country.

Requirement that all directors are residents or citizens of host country or positions of foreign officials on the board and in management may be restrained.
Requirement that the company must be owned and controlled by citizens/residents of the host country.

Requirement that a certain majority of the voting interests of the company is owned and controlled by the citizens of the host country.

Requirement that the company must be effectively controlled by the citizens of the host country.

Prior residency in the host country is required to obtain an operating license.

The position of foreign officials on the board and management is monitored and may be restricted.

Ad hoc limitations on the position of foreign officials on the board and management.

The operational location of the company must be in the host country.

Legal residency of the company in the host country required.

Cabotage\(^{33}\) reserved to national airlines.

Some country-specific examples

Only air carriers that are "citizens of the US" may operate aircraft in domestic air services and may provide international scheduled and non-scheduled air services as US carriers. To qualify as a citizen of the US, seventy five percent of the voting stock must be owned by US citizens and the corporate president and two-thirds of the directors must be US citizens. The air carrier must also be found to be controlled by US citizens; where the foregoing numerical criteria are met, this more subjective criterion is subject to case-by-case analysis and foreign beneficial ownership of up to 49 per cent does not necessarily prevent the requisite finding of the US control. (US)

“Foreign civil aircraft” require authority from the DOT to conduct speciality air services (i.e. commercial, non-transport services, such as crop dusting, advertising and aerial photography) on US territory. In order to conduct indirect air transportation activities (air cargo forwarding and charter activities other than as actual operators of aircraft), non-US citizens must obtain authority from DOT. Applications may be rejected on non-reciprocity and public interest grounds. (US)

Only “Canadians” may operate domestic air services and international scheduled and non-scheduled air transport services that are designated as reserved to Canadians. To be designated as “Canadian”, an air carrier must satisfy the conditions outlined in the Canada Transportation Act, viz. that the owner and operator is “a Canadian citizen or a permanent resident within the meaning of the Immigration Act, a government in Canada or an agent of such a government or a corporation or other entity that is incorporated or formed under the laws of Canada or a province, that is controlled in fact by Canadians and of which at least 75%, or such lesser percentage as the Governor in Council may by regulation specify, of the voting interests are owned and controlled by Canadians.” (Section 55). (Canada)

---

33 8th air freedom right; see footnote on aviation freedom rights.
Community air carriers must be effectively controlled by member states and/or nationals of member states. Free market access in the EC is available to Community air carriers, i.e. an air carrier that is licensed by EU member states, it must have its principal place of business and registered office in the community and be majority-owned and effectively controlled by member states and/or nationals of member states. (EU)

Requirement that CEO of a Korean airline be a Korean national. Registration of an aircraft under the Korean flag requires that the owner is a Korean national. (Korea)

A license to operate an air transport business may be granted only to enterprises where less than one-third of the voting rights are held by non-Japanese nationals and none of its representatives, and where less than one-third of members of the board of directors are non-Japanese. (Japan)

Registration in the national aircraft register is basically reserved for aircraft which are owned by Germans or by companies having their place of business in Germany. In case of special circumstances (e.g. nationals of EU Member States) registration of aircraft which are owned by non-German nationals is possible. “Genuine links” are required between aircraft, owner and Germany as the state responsible for the air worthiness of the aircraft. (Germany)

Genuine links are required between the nationality of the owner of an aircraft and the flag which it flies in Korea. (Korea)

For international carriers, a number of national interest criteria must be satisfied relating to the nationality of board members and the operational location of the enterprise. (Australia)

Aircraft may not be registered in Switzerland unless they are owned by Swiss citizens or by foreigners who reside in Switzerland and use the aircraft for travel originating from Switzerland or unless they are owned by Swiss-held companies. Legal residence in the country required for national treatment except when international agreements exist (to obtain a concession to operate certain commercial transport routes, a foreign enterprise must, inter alia, have a legal residence in Switzerland). (Switzerland)

An air transport license may not be granted to applicants who are not UK nationals or bodies incorporated in the UK (or certain oversees territories) unless the Secretary of State for Transport consents to the granting of a license (licenses may be revoked if an air transport license holder is not or is no longer a UK national or UK body). Cabotage is reserved to national airlines, with the exception that, by virtue of an EC Council Regulation, European Economic Area airlines may provide cabotage services provided that they are within the scope of the Regulation, i.e. between two EEA airports. (UK)