

The Patchwork in the Sky

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THE PATCHWORK IN THE SKY

An examination of how the eight largest global aviation markets regulate trade, investment and alliances between airlines

Emma Moulds

- The discipline for this research is international air law. International air law provides a set of rules, norms and principles to govern the use of airspace and the transport of passengers and cargo on aircraft.
- Although international air law is developed by and for sovereign states, in a globalised world, international air law has direct application to national and foreign air transport businesses.
- Domestic law does not displace a State's obligations under international air law.
- Prior to the COVID-19 pandemic, the international airline industry had been on an upward trajectory. While so many industries have been impacted by COVID-19, the impact on international airlines has been profound.
- The regulatory framework for scheduled international air transport is unlike any other internationally traded good or service. Trade in air services explicitly falls outside the scope of the General Agreement on Trade in Services and major regional trade agreements, and is instead regulated through a patchwork of domestic legislation and bilateral and multilateral air service agreements.
- In spite of international momentum to move beyond the patchwork regulatory framework, progress prior to the pandemic had been slow.
- It is difficult to ascertain the exact status of air service agreements between the jurisdictions as, at present, there is no single, accurate repository of information on air service agreements and arrangements between them.
- Although Brazil and India have relaxed domestic restrictions on foreign ownership and control for airline licensing, nationality criteria are still prevalent requirements for airline licensing and designation or authorisation in air service agreements. Prior to the pandemic, there did not appear to be any momentum by the other jurisdictions to reform their domestic legislation.
- Airline alliances have been one of the industry's creative solutions for circumventing the restrictive patchwork regulatory framework for scheduled, international air transport. The jurisdictions all have domestic competition or antitrust legislation and there is a high degree of consistency between the types of conduct considered to be anticompetitive.
- Notwithstanding these similarities, airlines are still required to comply with the specific legislation for each State they operate in. Consequently, one alliance arrangement may be subject to review by multiple competition regulators even though the agreement will relate to the same routes.
- In spite of the tremendous upheaval of the airline industry through the pandemic, this dissertation concludes that the industry is likely to continue on its pre-pandemic regulatory path, with trade, investment and alliance issues continuing to polarise the industry, legislators and regulators for a long time to come.