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## COMPETITION TO THE EXTENT NECESSARY: An Historical Introduction

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THE Declaration of Policy in the Civil Aeronautics Act gives the Civil Aeronautics Board a clear mandate to provide for "competition to the extent necessary to assure the sound development of an air transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the Postal Service and of the national defense." This policy admits neither of regulated monopoly nor of unregulated competition. Congress was impressed both with the need for some competition and the prevention of too much competition.

### BACKGROUND

Before the Act was passed, a Federal Aviation Commission had advocated to the 74th Congress (1935) "a certain measure of control by the government of the right of entry into the business in order that proper standards may be enforced and irresponsible campaigns of mutual destruction on the part of operators averted." The Commission was fearful that too many competitors on certain routes would ruin the quality of the service. It said: "To allow half a dozen air lines to eke out a hand-to-mouth existence where there is enough traffic to support one really first-class service and one alone would be a piece of folly."<sup>1</sup>

During the hearings prior to passage of the Civil Aeronautics Act practically every faction agreed that economic regulation was necessary. Representatives of the principal airlines stressed the importance of giving the existing lines "reasonable security" against "unwarranted and unnecessary competition." They pointed out that capital was badly needed at the time and unless capital was given some assurance that it would be protected from over-building it would not be forthcoming.

<sup>1</sup> *Report of the Federal Aviation Commission, 74th Congress, First Session, Senate Document No. 15, pp. 52-61.*

Another argument in favor of certification of all new lines was that cutthroat competition might adversely affect safety standards. Thus "regulated competition" was favored as the best policy for maintaining high standards both from the economic and safety points of view.<sup>2</sup>

Certificates of public convenience and necessity have been required for all scheduled commercial air services inaugurated since May 14, 1938. In a 1941 case, the Civil Aeronautics Board stated that four questions should be considered in any application for new service:

1. Will the new service serve a useful public service, responsive to a public need?
2. Can and will this service be served adequately by existing routes or carriers?
3. Can the new service be served by the applicant without impairing the operations of existing carriers contrary to the public interest?
4. Will any cost of the proposed service to the government be outweighed by the benefit which will accrue to the public from the new service?<sup>3</sup>

In 1943 the Board was apparently expansionist-minded and in the T.W.A., North-South California Service case said:

Since competition in itself presents an incentive to improved service and technological development, there would be a strong, although not conclusive, presumption in favor of competition on any route which offered sufficient traffic to support competing services without unreasonable increase of total operating cost.<sup>4</sup>

In 1944, however, it said:

The mere fact that a particular route develops a large volume of traffic does not of itself afford sufficient justification for a finding that the public convenience and necessity require establishment of an additional competitive service exactly duplicating an existing operation.<sup>5</sup>

Notwithstanding the Board's concern over duplication, the amount of competition among the domestic airlines increased greatly between 1940 and 1948 as shown by the increased competitive service provided between the leading fifty pairs of cities on the domestic air routes:

Service	September 1940	September 1948
4-carriers	None	3 pairs
3-carriers	3 pairs	16 pairs
2-carriers	8 pairs	22 pairs
single-carrier	39 pairs	9 pairs
Total	<u>50 pairs</u>	<u>50 pairs</u>

These fifty pairs of cities included most of the important air traffic-generating centers and taken collectively they were producing from one-third to one-half of the total domestic air line passenger-miles.<sup>6</sup>

<sup>2</sup> Healy, Kent T., *Economics of Transportation in America* (1940) pp. 438-9.

<sup>3</sup> 2 C.A.B. 447 (1941) *Delta Air Corporation, Service to Atlanta and Birmingham*.

<sup>4</sup> 4 C.A.B. 373 (1943).

<sup>5</sup> 6 C.A.B. 217 (1944).

<sup>6</sup> *Air Line Industry Investigation*, Hearings before the Committee on Interstate and Foreign Commerce, U.S. Senate (1949) p. 750.

During the "Air Line Industry Investigation" by the Senate Committee on Interstate and Foreign Commerce in 1949 and 1950, there was pronounced criticism of the Board's liberal policy toward competitive air services. Several airline executives ascribed the poor financial condition of the industry to the excessive duplication and triplication of routes resulting from overly liberal issuance of certificates of public convenience and necessity.<sup>7</sup>

By 1951 control of entry and restraints on expansion of existing carriers' routes had been considerably tightened up. Far from its earlier presumption in favor of competition, the Board said the Act contained "no mandate to seek competition merely for the sake of competition." Instead, to obtain a certificate in the particular case to improve service which is not up to adequate standards. In a dissenting opinion, Member Josh Lee objected, stating that such a requirement "changes the policy of the Board from one that favors competition wherever it can be justified to one that opposes it wherever its refusal can be justified."<sup>8</sup>

#### THE PRESENT SITUATION

Expansion of the domestic air transport system has not stopped; it has simply been slowed down. New route applications and changes in existing certificate requirements are being considered by the Board along with improvement of the air route pattern through mergers and equipment interchanges. Service to the public is improving and at the same time the air carrier industry is gaining economic strength.

By mid-1954 the domestic air transport system had expanded to a record of 168,824 route miles with 37 certified carriers authorized to serve a total of 654 cities. These included 14 trunk lines (including Catalina Air Transport), 3 all-cargo carriers, 2 territorial carriers and 18 local service carriers (including 3 helicopter services). In addition, various types of air services were temporarily authorized by the Board through the exemption process. These included 55 irregular carriers, 1,391 air taxi operators, 1 non-certified Alaskan air carrier, and 53 air freight forwarders.<sup>9</sup> In its 1954 annual report to Congress, the Board could report:

The fiscal year 1954 was a very favorable one for the air transport industry from practically all aspects. Air travel continued to increase, the financial outlook for the industry as a whole was good, and overall dependence on government subsidy leveled off. These favorable developments were achieved, furthermore, without any compromise in airline safety. . . . The price per mile of air travel in 1954 reached its lowest point in the past 5 years for both domestic trunk line passengers and for international passengers.

<sup>7</sup> *Ibid.*, Testimony of Messrs. Patterson, Smith and Rickenbacker, pp. 671, 742 and 1127. Doubtless they were disturbed by the fact that route mileage operated by middle-sized and relatively small domestic trunk lines more than doubled from 1938 to 1948 while that of the four largest systems increased only by approximately 16 per cent.

<sup>8</sup> 12 C.A.B. 518 (1951) *Southern Service to the West*.

<sup>9</sup> Civil Aeronautics Board, *Annual Report for the Fiscal Year Ending June 30, 1954*.

## RESPONSIBILITIES OF CONTROLLED COMPETITION

The policy of "competition to the extent necessary" will require constant reappraisal on the part of the Civil Aeronautics Board, for to a large extent Congress has decided that the judgment of five men shall supersede the natural economic law of the survival of the fittest.

Improvement of the economic position of the air carriers will probably bring pressure on the Board to be more liberal in granting certificates for new services. It will certainly permit the removal of certain restrictions as to local or through service in the air route pattern. It may allow for the eventual addition of new trunk line and local service systems. It will certainly reduce the need of most air carriers for direct subsidies over and above reasonable payments for air mail service.

Certainly one of the strongest arguments for continued restraints on competition is the problem of safe traffic control. Available air space around our most popular large city airports is shrinking and pilots on the busiest air routes have lately been reporting a disturbing number of "near misses" due to faulty vertical separation of aircraft.<sup>10</sup> We must not allow the excellent safety records of the past few years to make us forget that even with the vast improvements in instruments, safe air navigation still requires the wrapping of each plane "in an ungainly cocoon of air because neither pilot nor controller can pinpoint the plane's position with sufficient accuracy to allow a narrower margin."<sup>11</sup>

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<sup>10</sup> *American Aviation*, March 28, 1955.

<sup>11</sup> Kilrain, Walter, discussing safety records of 1954 in *American Aviation*, April 25, 1955.