

# The Progress of Convergence and Harmonization of Antitrust Laws

February 7, 2000

Washington, DC—Speaking before the IATA Legal Symposium on February 7, 2000, Bert W. Rein reviewed the extent to which differing competition laws, principles and enforcement practices are impacting airline cooperative arrangements, including carrier alliances and multilateral interline and distribution agreements. The current legal environment is clearly undergoing rapid evolution, with some promising signs of convergence or harmonization on basic antitrust principles in some areas. But there also remain traditional and other factors that stand in the way of such progress in other important areas.

To examine the convergence and harmonization process, Mr. Rein drew upon the experience of the International Air Transport Association (IATA), a global membership organization comprising over 250 of the world's airlines. During the past several decades many of IATA's fundamental airline cooperative agreements and programs have undergone intense scrutiny in the U.S. by federal aviation agencies. This history shows how other governments, reacting to the U.S. initiatives, have caused the U.S. authorities to take a broader look at market impacts and to consider the value of interline cooperation on a global basis – not only for U.S. consumers, but for passengers located in many other countries. At the same time, the federal review of IATA's agreements has caused IATA to restructure some of its programs to better fit changing market expectations. These accommodations share a common recognition that international air transportation cannot, in the end, function successfully in anyone's best interest without a willingness to see more than one point of view on competition policy and antitrust enforcement.

Although the IATA experience provides several good guidelines on how convergence and harmonization may take place, the fact is that much work remains to be done. Today the recognition of the need for national competition laws is much greater than existed even several decades ago at the start of the IATA reviews – largely due to U.S. efforts. However, this development has also made governments more aware of the "effects" that actions taken by entities in other

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jurisdictions – such as mergers or airline alliances – may have on their markets, giving rise to demands for intervention and review of such agreements by multiple governments. Thus, this heightened sensitivity about the need for competitive markets has, perhaps ironically, made the need for harmonization and convergence more imperative, yet more difficult to achieve in certain areas.

While there is ample reason for optimism in the longer term because of the inevitable importance of resolving these kinds of differences in a functioning global economy (the lesson to be drawn from IATA's experience), the fact remains that airlines will continue to face a multidimensional task in planning and implementing competitively-sensitive transactions for the immediate future.