

THE US AIRLINE DEREGULATION AND ITS CONSEQUENCES

Yard. Doç. Dr. Cenk Şahin*

*To a great teacher and scholar, my
professor, İl Han ÖZAY*

INTRODUCTION

Since late 1960's there has been an ongoing debate among proponents of continuing deregulation, regulatory reform and re-regulation. Since the impact of deregulation on the overall economy is more difficult to ascertain, it is not easy to assess the successes and failures of deregulation.

Understood most broadly, as government intervention in social activity, regulation is pervasive, embracing the entire array of criminal, tort, contract, property, labor, securities, antitrust, and environmental controls.¹ Deregulation, in this sense, is commonly understood as the removal or the reduction of comprehensive controls over particular industries.

For many decades, the federal government has regulated the prices and the conditions for entry in certain sectors of the U.S. economy. This type of regulation, often called "economic regulation," was broadly applied to the energy, transportation, communications, and financial sectors of the economy. Whatever historical purposes regulation may have served in the past especially in the field of economy, in present day, there is a growing consensus that, in particular sectors, excessive types of regulation no longer serve the interests of national economies. Indeed, over the last several years, in some areas, a substantial part of economic regulation has been relaxed or eliminated.² Deregulation emanated from the perceived "failure of the government regulation"³ and the value placed on the efficacy of free markets. As Richard Posner emphasized;

* Asst. Prof. Dr., Istanbul University, Law School.

¹ Richard Posner, *The Effects of Deregulation on Competition, The Experience of the United States*, 23 *Fordham Int'l L.J.* 7 (2000).

² However, in some cases, the apparent supplanting of administrative activity has been more a matter of aspiration than reality. Deregulation efforts in these sectors have not led to a real diminution of regulatory activity. Moreover, the results of deregulation experiences regarding financial markets in the US point to the fact that, a seat should always be allocated for governmental intervention. Therefore, we are now globally facing the prospect of a hybrid system that resembles to a free market, but inevitably involves the control and intervention of the government when it is necessary.

³ While proponents of regulation often point to "market failure," proponents of deregulation point to "regulatory failure" as a justification for the market approach

“What mainly happened is that regulation broke down; it was a microcosm of the breakdown of the Soviet Union’s command-and-control economy. A combination of inflation in the 1970s and accelerating technological change favorable to competition brought about a situation in which regulation no longer satisfied the needs of key interest groups, whether of regulated firms or customers.”⁴

This study will try to weave a synthesis, on a comparative basis, from the existing stock of knowledge about regulation and deregulation processes of the US Airline Industry. It will briefly reveal the history of airline deregulation and the incentives favoring it. This will make it easier to explain the statutory, technological, and ideological changes driving the movement towards deregulation.

I. REGULATION ERA

Since the airline industry was perceived as having a tremendous potential effect on the economy, the government has been active in the growth of the American airline industry.⁵ Although the federal government’s first minor attempt at regulating the airline industry⁶ occurred in 1918,⁷ the age of airline regulation essentially began in 1938 with the Civil Aeronautics Act of 1938 (CAA),⁸ the first comprehensive law passed by the United States Congress to regulate the airlines in both economic and safety aspects.

The Civil Aeronautics Act was based on the fear of cutthroat and excessive competition and the adverse effect that “Great Depression” was having upon the industry.⁹ Indeed, Congress feared it would fall into the same disastrous economic hole as the railroads and motor carriers had in the 19th and early 20th century. Hence, the goal of the Act was to achieve stability, enhance safety, and ensure the growth and development of the young industry.¹⁰

because regulation suppresses innovation, denies price and quality options, encourages wasteful competition, produces resource misallocations, shelters and encourages inefficiency, and encourages a wage/price spiral. See Alfred E. Kahn, *Transportation Deregulation... and. All That*, *Econ. Dev. Q.* 91, 99 (1987).

⁴ Richard A. Posner, *Natural Monopoly and its Regulation*, (30th Anniversary Edition) CATO Institute Washington DC viii (1999).

⁵ Paul Stephen Dempsey, *The State of Airline, Airport & Aviation Industries*, 21 *Transp. L.J.* 133 (1992).

⁶ Bruce Keplinger, *An Examination of Traditional Arguments on Regulation of Domestic Air Transport*, 42 *J. Air & Com.* 187, 188-189 (1976).

⁷ In fact, The Contract Air Mail Act of 1925 and Air Commerce Act of 1926 were the initial legislations affecting airlines.

⁸ Civil Aeronautics Act of 1938, ch. 601, 52 Stat. 973 (1938).

⁹ Dempsey, *The State*, *supra* note 5, at 137.

¹⁰ Roy Pulsifer, *Introduction*, *Symposium Issue on Federal Economic Regulation of the Airlines*, 41 *J. Air Law & Comm.* 573, 574 (1975).

The Act created an agency of the federal government, the Civil Aeronautics Authority (CAA),¹¹ subsequently renamed the Civil Aeronautics Board (CAB). Among other things, the Act of 1938 authorized the agency with broad powers to regulate the economic aspects of the industry.

The regulatory scheme called for the control of two economic areas:

1) Airline entry and exit of the market: the Act gave the CAB the power to control entry¹² by allowing it to issue certificates of "public convenience and necessity."¹³ Once a carrier served a market, it ordinarily could not cease service unless it received governmental approval to exit.¹⁴ Moreover, the agency had the power of allocation and assignment of routes. It exercised some control over the quality of service.¹⁵ In addition to these activities, carrier safety, financial and managerial ability, and compliance disposition were regulated in certification proceedings.

2) Fares: Airlines were not permitted to set their own fare levels. Fares were strictly regulated by the CAB, and they could not be raised or lowered without its approval.¹⁶ Air carriers were required to file with the CAB detailed tariffs setting forth their classifications, rules, regulations, practices and services. The CAB had the power to require certain information be included in tariffs and to reject tariffs not in conformity with such requirements.

Additional controlling power was also conferred to the CAB over such things as subsidies, consumer protection, intercarrier relationships,¹⁷ and the establishment and maintenance of airports and airway navigational aids.¹⁸

Criticizing the pervasive power of the agency, Kahn wrote that "airline regulation was a regime of governmental cartelization of an industry that was and would otherwise have been structurally competitive-- imposing direct limitations on the permissible operations of the several providers and strictly

¹¹ The Civil Aeronautics Act was recodified and restructured by the Federal Aviation Act of 1958.

¹² The CAB permitted no entry by new major ("trunk") carriers for decades, and approved only a small fraction of applications for new service by existing carriers. The reason is that it sought to preserve a non-cost-based structure of fares that produced a patchwork of some very profitable routes and other unprofitable ones. This system was designed to promote air service while maintaining the financial viability of each carrier, but it was incompatible with free entry and exit in the industry. See Alfred E. Kahn, *Deregulation and Vested Interests: The Case of Airlines*, in *The Political Economy of Deregulation: Interests Groups in the Regulatory Process* (Roger G. Noll and Bruce M. Owen eds.), AEI Studies, 155 (1983).

¹³ Stephen G. Breyer, *Regulation and Its Reform*, Harvard University Press, 199 (1984).

¹⁴ Robert M. Hardaway, *Transportation Deregulation, (1976-1984): Turning the Tide*, 14 *Transp. L.J.* 101, 134 (1985-1986).

¹⁵ Kahn, *Deregulation and Vested Interests*, supra note 12, at 145.

¹⁶ Michael A. Katz, *The American Experience Under the Airline Deregulation Act of 1978- An Airline Perspective*, & Hofstra Lab. L. J. 87, 88 (1988).

¹⁷ Roy Pulsifer, supra note 10, at 574.

¹⁸ Dempsey, *The State*, supra note 5, at 290.

prohibiting price competition among them.”¹⁹ However, the CAB created a monopolistic or oligopolistic restriction in the airline industry. In fact, confirming Kahn, leading scholars comment that, the original structure of the industry reflects the direct contrary. Competitiveness, volatility and complexity are the three characteristics of the market. These factors distinguish the industry from a natural monopoly and make it inappropriate for a competition-restraining regulation.²⁰

II. TOWARDS DEREGULATION

The next forty years of regulation led to such stability that the market became stagnant, concentrated and began to lose profitability. The CAB's policies during the Nixon Administration “significantly favored the largest airlines to the detriment of the smaller ones, thus dividing the industries loyalty.”²¹ In the early 1960s scholars, particularly economists, began to discuss the benefits and burdens of airline deregulation. By the mid-1970s deleterious economic indicators of the regulation began to fuel deregulatory momentum within the political and academic arena.²²

In that era, several events accumulated to create severe financial turbulence for the industry. Excessive investment in wide-bodied aircraft had created excessive fleet capacity. Adverse weather coupled with an economic recession that suppressed passenger demand, as did a fuel crisis stimulated by the Arab Oil Embargo of 1973.²³

Concurrently with the external effects, the regulatory process itself created crucial problems such as: constraints on the innovation of service alternatives, restricted market entry and lack of competitive pricing. The CAB's regulatory impact on efficiency was a major concern.²⁴ In 1975, Senator Kennedy's subcommittee described the industry regulated by the CAB as a place where “the skies are filled with gourmet meals and Polynesian pubs;”²⁵

¹⁹ Kahn, Alfred E. Kahn, *Reforming the FCC and Its Mission: Lessons From the Airline Experience*, 4 J. Telecomm. & High Tech. L. 43 (2005).

²⁰ Breyer, *Regulation and its Reform*, *supra* note 13, at 198-199.

²¹ Gary J. Edles, *The Strategy of Regulatory Change*, 49 ICC Practitioners' J. 626, 628 (1982).

²² Douglas W. Caves et al., *An Assessment of the Efficiency Effects of U.S. Airline Deregulation via an Internal Comparison in Public Regulation: New Perspectives on Institutions and Policies* (ed. Elizabeth E. Bailey, the MIT Press, Cambridge, 288 (1996).

²³ Paul Stephen Dempsey, *The Rise and Fall of the Civil Aeronautics Board - Opening Wide the Floodgates of Entry*, 11 *Transp. L.J.* 91, 102 (1979).

²⁴ Herbert D. Kelleher, *Deregulation and the Troglodytes-How the Airlines Met Adam Smith*, J. Air L. 6 *Comm.* 299 (1985).

²⁵ H.R. Rep. No. 1211, 95th Cong., 2d Sess. 3, reprinted in 1978 U.S. Code Cong & Admin. News 3737, 3739 Because of the intensively regulated fares, airlines had no incentive to reduce costs. This forced them to engage in wasteful and extravagant service competition, offering “gourmet meals and Polynesian pubs, and culminating in the so-called ‘liquor wars’ in which airlines competed by offering free liquor to customers.” See Hardaway, *supra* note 14, at 138.

scheduled service is frequent. Yet planes fly across the continent fifty percent empty. And fares are 'sky high.'²⁶

Although the impetus towards economic deregulation of the airlines had begun in the mid-1970 during the administration of President Gerald Ford, the movement turned to action when President Jimmy Carter took office in 1977. President Carter appointed Professor Alfred E. Kahn, a leading economist of the country and a strong advocate of deregulation. He influenced the Kennedy Subcommittee intensively. Kahn criticized traditional CAB regulation as having (a) caused air fares to be considerably higher than they otherwise would be; (b) resulted in a serious misallocation of resources; (c) created crucial inefficiency; (d) discouraged innovative pricing, and in particular to offer of a greater variety of price quality options, (e) created a chronic tendency toward excess capacity in the industry.²⁷

He argued that the characteristic of the industry was not a natural monopoly and there are only few economies of scale. Therefore the industry could be conducive to highly effective competition and the ease of potential entry into those individual markets, could well suffice to prevent monopolistic exploitation.²⁸

Kahn and some other proponents of deregulation drew up a policy shifting the focus of regulation from ensuring the "well-being of the aviation industry, to making service economically available to more of the American public." Deregulating pricing, market entry and routes would allow competition in these areas, instead of granting automatic profit to the airlines at the consumers' and investors' expense. Hence, before the enactment of the deregulatory law by Congress, CAB Chairman, Kahn, and his staff had begun the process of administratively deregulating.²⁹ They started to implement a number of revolutionary deregulatory initiatives that liberalized entry and pricing. Kahn prodded the agency into loosening some restrictions.³⁰ The CAB began to allow some entry by existing carriers onto already served routes, followed by a grant of increasing discretion over fares.³¹ Considerably successful results encouraged Congress to provide a formal deregulatory process.³² Legislators were convinced by Alfred Kahn at the CAB and by Edward Kennedy in the U.S. Senate that through deregulation and the pricing

²⁶ According to a Senate subcommittee chaired by Senator Edward Kennedy, "[t]hroughout most of its pre-1975 history, the [CAB] systematically restrained airline management by denying or dismissing most applications for new routes, by refusing to allow new carriers to enter the truckline industry, and by discouraging experiments with reduced coach fares or deep discount fares." H.R. Rep. No. 1211, 95th Cong., 2d Sess. 2, reprinted in 1978 U.S Code Cong & Admin. News 3737, 3738.

²⁷ See Paul Stephen Dempsey, *Law and Foreign Policy in International Aviation*, Transnational Pub, 24 (1987).

²⁸ See Kahn, *Reforming The FCC*, supra note 19, at 44-46.

²⁹ Stephen G. Breyer, *Two Models of Regulatory Reform*, S.C.L. Rev. 629, 639 (1983=.

³⁰ Edles, *The Strategy*, supra note 21, at 630.

³¹ Caves et al., supra note 22, at 288.

³² Stephen G. Breyer, *Antitrust, Deregulation, and the Newly Liberated Marketplace*, 75 Cal. L. Rev. 1005, 1008 (1987).

flexibility it offered to the supplying firms, there would be product innovation, increased economic efficiency, and service options dictated by actual consumer demand.³³

The result was the Airlines Deregulation Act of 1978,³⁴ which abrogated the rate setting authority of the CAB, transferred its safety responsibilities to other federal agencies, and had other functions, powers, or duties of the CAB absorbed by various agencies in the Department of Transportation. All of these responsibilities, functions, powers, and duties of the CAB were phased out or transferred on a staggered basis.³⁵

The Airline Deregulation Act of 1978 called for a smooth transition from a "regulated regime to a new one, "competitive market."³⁶ The policy of the 1978 Act reflected the change from a public utility-focused industry to a competitive market by prescribing the attributions of the new public standard.

The Act included ten objectives to accomplish the desired standard:³⁷

- 1) encourage adequate, economic, efficient, and low-priced services;
- 2) promote use of competition to provide needed air transportation and encourage efficient and well-managed carriers that will attract capital and earn adequate profits;
- 3) encourage a sound regulatory environment;
- 4) encourage satellite airports;
- 5) prevent unfair, deceptive, predatory, or anticompetitive practices;
- 6) protect small community service;
- 7) rely on competition to provide for efficiency, innovation, and lower prices;
- 8) encourage entry of new carriers;
- 9) maintain safety as the highest priority; and
- 10) prevent deterioration in safety procedures.

The Airline Deregulation Act also called for the "sunset" of the CAB on January 1, 1985, when its remaining responsibilities were transferred to the U.S. Department of Transportation.³⁸ Those primarily involved the regulation of international routes and rates, small community subsidies, and mergers. The latter was transferred from DOT to the U.S. Department of Justice in 1989.

Deregulation had been opposed by most of the airline industry that were enjoying the benefits of insulation from competition. The few exceptions among the carriers were the ones that had been especially constrained by regulation.

³³ Dempsey, *The State*, supra note 5, at 147.

³⁴ Airline Deregulation Act of 1978, 92 Stat. 1705, 49 U.S.C. § 1301 et seq.

³⁵ 49 U.S.C. §§ 1301-1315.

³⁶ Stephen G. Breyer, *Reforming Regulation*, 59 *Tul. L. Rev.* 4, 20 (1984-1985).

³⁷ 49 U.S.C. §§ 1301-1315.

³⁸ Paul Stephen Dempsey, *Antitrust Law and Policy in Transportation: Monopoly is the Name of the Game*, 21 *Ga. L. Rev.* 505, 515-524 (1987).

United Airlines, as the largest domestic carrier, was one of the exceptions.³⁹ It emerged as a strong advocate of deregulation since all of its efforts to expand its routes had been rejected by the CAB. Like most of the industry, the airline unions were opposed to deregulation, fearing instability and consequent loss of jobs and reduction in the earnings and standard of living of its members.⁴⁰

The effects of deregulation, some of which were anticipated, and some of which were not, soon followed. Thanks to their freedom, carriers entered any route they wished. CAB started to permit unlimited downward pricing flexibility and considerable upward flexibility.⁴¹ Most of the airlines realigned their route systems to establish a "hub and spoke" system, dominating service into and out of certain cities on which they centered their operations, and through which on-line connections were made.⁴² Low-cost operators entered markets formerly dominated by established airlines. Those wars provided new lower fare/quality options. The major carriers lowered their fares to meet the new competition.⁴³ While these actions brought increased service and lower fares to major markets which attracted competition, they brought some unintended results too.

The aviation landscape has changed as a result of the terrorist attacks on September 11, 2001. At that time, the industry was already having a recession a result of relatively reduced passenger demand. When that recession combined with the affects of 9/11 attacks, Iraq War, and explosion of fuel prices, the market faced a dramatic financial downturn.⁴⁴ Just as fuel prices began to stabilize, the global economic downturn caused passenger numbers to decline sharply⁴⁵. Recently, influential policymakers have begun to speak out against a perceived decrease in competition resulting from the push towards industry consolidation. While airlines have argued for flexibility in structuring their arrangements, critics are concerned about the effect on fares and services. The outcome of this debate will play a large role in determining the structure of the industry in the future⁴⁶.

³⁹ Alfred E Kahn, *Deregulation: Looking Backward and Looking Forward*, 7 *Yale J. on Reg.* 325, 331 (1990).

⁴⁰ Katz, *supra* note 16, at 93.

⁴¹ Caves et al, *supra* note 22, at 288.

⁴² Steven A. Morrison, & Clifford Winston, *The Remaining Role for Government Policy in the Deregulated Airline Industry*, in *Deregulation of Network Industries: What's Next?* (Sam Peltzman & Jim Clifford eds.), Washington DC. Brookings Institutions Press, 4-5 (2000); See also Katz, *supra* note 16, at 93.

⁴³ Alfred E. Kahn, *Airline Deregulation- A Mixed Bag, But A Clear Success Nevertheless*, 16 *Transp. L.J.* 229, 235, 236 (1987-1988); Breyer, *Reforming Regulation*, *supra* note 36, at 15.

⁴⁴ Alfred E. Kahn, *Lessons from Deregulation*, Washington DC: Brookings Institution Press, 3, 5 (2004).

⁴⁵ 2009 A.B.A. Sec. Pub. Util. Comm. & Transp. Ann. Rep. 33 (2009).

⁴⁶ *Id.*

III. SAFETY REGULATION IN THE AIRLINE INDUSTRY

When analyzing the effects of deregulation, sometimes economic regulation can be confused with safety regulation. Although they are related to each other they have different justifications. This difference compels policy makers to practice them separately. Indeed, beyond the relaxation of the rules, an effort for deregulation of safety would constitute an anomaly because of the need for “police power” which must be inherent in safety rules.

Until the end of 2001 and even before deregulation, responsibility for regulation of safety was with the Federal Aviation Administration (FAA), which was authorized to withhold air carrier operating certificates from airlines lacking sufficient resources to maintain aviation standards.

From the outset, the regulatory process has played a major role in aviation safety. And as it did before the regulation, government has implemented several control mechanism that contributed to airline safety after deregulation as the skies have become more crowded. The government also had a role in restraining some of the so-called myopic behavior occurring after economic deregulation. Since the financial distress led some carriers to make reductions in maintenance and training, regulatory enforcements became more important.

In the period subsequent to the deregulatory movement, two important statutes, the Security and Development Act⁴⁷ of 1985 and the Aviation Security Improvement Act⁴⁸ of 1996 imposed additional responsibilities-including the development of security standards-- to the FAA to oversee security at major airports.

The terrorist attacks of September 11 focused the government and the public on the airline safety regulations more than ever. As a quick response, on November 19, 2001, Congress enacted the Aviation and Transportation Security Act (ATSA), establishing a new agency within the Department of Transportation. This new agency, the Transportation Security Administration (TSA), bears responsibility for aviation security. The most significant of ATSA's mandates includes federalizing the airport security function (which was theretofore performed by the airlines, under FAA regulations), imposing minimum job qualifications upon security employees, imposing background checks on airport employees, and requiring impregnable cockpit doors. In parallel with these requirements, ATSA transfers security responsibilities that once belonged to air carriers and security oversight responsibilities that once belonged to the FAA to the newly created TSA. In addition to this, the law created two different fees-- an aviation Security Infrastructure Fee and a September 11th Security Fee, which imposed a heavy financial burden on the deregulated industry.

Finally, in 2002 Congress passed the Homeland Security Act (HSA).⁴⁹ The law created a new cabinet-level executive branch agency, the Department

⁴⁷ Security and Development Act of 1985, Pub. L. No. 99-83, tit. V, pt. A, 501(a), 99 Stat. 219 (1985).

⁴⁸ Aviation Security Improvement Act of 1990, Pub. L. No. 101-604, 49 U.S.C. 44931 (1990).

⁴⁹ Homeland Security Act, Pub. L. No. 107-296, § 101, 116 Stat. 2135 (2002).

of Homeland Security in which it consolidated twenty-two existing agencies. Several of the agencies historically have been involved in airport and airline passenger and cargo review.

CONCLUSION

In a total computation, “despite the industry’s unusual vulnerability to recessions, act of terrorism and war”⁵⁰ airline deregulation can be considered as a success. Economic deregulation has to a great extent worked in opening the skies to more people at reduced fares to more destinations. Substantial reductions in fares, promotion of efficiency and innovation has generated important benefits, not only to consumers, also to airlines willing to make the effort to adapt to it, and to those members of the labor force who are willing to work at competitive wages.⁵¹

When criticizing deregulation, several scholars rely on deterioration of service.⁵² But it is obvious that this deterioration reflects the dilemma of competition. In the decade before deregulation, domestic flights were, on average, less than 53 percent full; in 1997-2001, they averaged over 70 percent.⁵³ “Competition in the unregulated market has proved to the satisfaction of the carriers that most travelers are willing to sacrifice comfort for lower fares.”⁵⁴

Another argument as a flaw of deregulation is the financial distress.⁵⁵ But this result is again emanated from the character of competition. The bankruptcies, mergers and acquisitions have largely been the consequence of the intensely competitive nature of the industry since deregulation. But, unlike electricity deregulation in California, this financial distress didn’t deprive the consumers of the benefits of deregulation.

Opponents of deregulation emphasize other unintended results to justify their arguments. They generally refer to “loss of small community service”⁵⁶, “lowered safety standards”, “increased concentration at hubs”, monopolistic

⁵⁰ Kahn, *Lessons from Deregulation*, supra note 44, at 3.

⁵¹ Michael E. Levine, *Airline Competition in Deregulated Markets: Theory, Firm Strategy, and Public Policy*, 4 *Yale J. on Reg.* 393, 492 (1987).

⁵² Melvin A. Brenner, *Airline Deregulation--A Case Study in Public Policy Failure*, 16 *Transp. L.J.* 179, 208-215 (1987-1988).

⁵³ Kahn *Lesson From Deregulation*, supra note, 44, at 3-4.

⁵⁴ *Id.*

⁵⁵ Brenner, supra note 52, at 200-206.

⁵⁶ As to the critics, deregulation removed the traditional “public utility” concept which enabled the carriers to cross-subsidize thin traffic routes with above-average profits from strong one since the profits on the strong routes could be preserved by limiting competition on them. Once the stronger routes were thrown open to “free entry,” it became necessary simultaneously to authorize “free exit” from the weak routes. This authorization brought the loss of small community service. See Paul Stephen Dempsey, *Transportation Deregulation-On A Collision Course?*, 13 *Transp. L.J.* 329,355-359 (1984).

exploitation of a minority of customers”, “financial distress”, “predatory mergers”, and an overabundance of bankruptcy filings.⁵⁷

When making a cost-benefit analysis of airline deregulation two factors should be emphasized at the outset. First, deregulation of airlines was never intended to be the basis for abandoning safety responsibilities or for failing to implement the antitrust and consumer protection laws.⁵⁸ Indeed, As Kahn noted, “no sensible deregulator intended government to abandon these heavy responsibilities”⁵⁹ Consequently, it would be a utopian to expect to get perfect results from the deregulatory process. It is inevitable that, like regulation, deregulation brings a pack of difficult problems. The question for the public policy should be whether the burden of these problems weighs more than the total benefits of the public. If the objective is answer is no, there is no justification to turn back.⁶⁰

Second, it is well known that, a number of external factors contributed to the unintended consequences of deregulation.⁶¹ In early years of deregulation, fuel prices doubled due to the OPEC oil embargo⁶² and then subsequent fuel crises occurred, economic recessions took place, international terrorism was directed against civil aviation, and several strikes handicapped the industry. Finally, as noted above, the global economic downturn caused passenger numbers to decline. Thus, one of the difficulties in assessing the impact of deregulation and making a comparative analysis lies in the assumptions one makes about how those industries would have performed under the effect of these external factors, if deregulation had not occurred.⁶³ Since there isn't a sufficient correlation between the financial downturn-accelerated external factors-and deregulation, it doesn't justify a reimposition of competition-restraining regulation.⁶⁴ Instead, without violating the antitrust laws, government should focus to help airlines who are seeking salvation on trying to strengthen through merger.⁶⁵

In conclusion, airlines have grown dramatically since deregulation in 1978. Passengers have significantly cheaper flights than 30 years ago, and many more options with air carriers. Demand for air travel is projected to continue growing well into the future⁶⁶.

⁵⁷ Paul Stephen Dempsey, *The Social and Economic Consequences of Deregulation*, Quorum Books, 240- 241 (1989).

⁵⁸ Alfred E. Kahn, *Deregulatory Schizophrenia*, 75 *Calif. L. Rev.* 1059, 1064-65 (1986).

⁵⁹ Kahn, *Airline Deregulation*, *supra* note 43, at 251.

⁶⁰ *Id.*

⁶¹ Hardaway, *supra* note 14, at 104.

⁶² John R. Meyer et al, *Airline Deregulation: The Early Experience*, Boston: Auburn House Publishing Co., 71 (1981).

⁶³ Katz, *supra* note 16, at 96.

⁶⁴ Kahn, *Reforming the FCC*, *supra* note 19, at 45.

⁶⁵ Kahn, *Lessons From*, *supra* note 44, at 7.

⁶⁶ The FAA's *Aerospace Forecasts: Fiscal Years 2006-2017* (FAA 2006) projects that domestic scheduled airline enplaned passengers will increase at an average annual rate

Empirical studies have shown that, the United States has achieved substantial economic benefits from the deregulation of airline industry over the past 30 years. Policy makers should allow market control in the absence market failures and public interest concerns. Failure to remove unnecessary regulation likely will result in a market that does not allow service providers to adapt adequately to the market in terms of the services offered, the technology utilized and the availability of services in the market. However, wholesale deregulation doesn't seem feasible because of the safety or other public interest arguments. One thing is clear: air travel and airlines are not going to disappear. But the structure of the industry is likely to change even more over time⁶⁷. In this regard, as Judge Cudahy noted, a return to full economic regulation is both improbable and impractical; but lesser measures can be taken⁶⁸.

of 3.1% a year through 2017, exceeding one billion enplaned passengers that year. See 2006 A.B.A. Sec. Pub. Util. Comm. & Transp. Ann. Rep. 56 (2006).

⁶⁷ 2006 A.B.A. Sec. Pub. Util. Comm. & Transp. Ann. Rep., at 56.

⁶⁸ Richard D. Cudahy, *The Airlines: Destined To Fail?*, 71 *J. Air L. & Com.* 7 (2006).