Airline ownership

appear an example of an opposing trend - tightening up the definition of "US-controlled" beyond even ownership and staffing requirements - but the details of the DHL debate show that the key issue is not ownership, but access to federal contracts. Even if DHL Airways were entirely US-owned, UPS and FedEx lawyers say efforts to bar it from competing for federal work would continue.

Easing the path
Looser ownership restrictions - in terms of both foreign-ownership laws and bilateral agreements - would also ease the path to airline consolidation. The proposed relaxation in the USA would allow foreign airlines, for example, to shore up alliance partners, strengthening existing airline alliances and financially troubled but strategically important US partner airlines.

Citizen case: DHL Airways' fight to be American
Changes in the definition of a US airline would affect the US government market, as seen in the DHL Airways case. The US DoT is holding a landmark series of hearings through the summer to determine whether DHL Airways is US-owned and controlled.

Germany's Deutsche Post, just over 50% owned by the German state, owns cargo giant DHL Worldwide Express. DHL Airways is a separate US-based company that operates cargo aircraft in North America. It is 75% US-owned, but Deutsche Post owns the remaining 25%. DHL Worldwide Express is DHL Airways' largest customer and the source of most of its revenues. For this reason, United Parcel Service (UPS) and FedEx challenge DHL Airways' US citizenship, arguing that it is actually controlled by Deutsche Post.

The DoT proceedings stem from a legislative provision in the USA's $80 billion Iraq war funding bill passed by Congress in April, sponsored by Senator Ted Stephens, which redefined how an airline is classified as US or foreign-owned. The intention of the provision was to prevent US military cargo contracts from going to carriers that are "not effectively controlled by citizens of the United States".

Today, a carrier is considered to be US-owned if 75% or more of its voting shares are controlled by US citizens. The bill says that an airline is foreign-owned or controlled if it "receives 50% or more of its operating revenue over the most recent three-year period from a person not a citizen of the United States and such person, directly or indirectly, either owns a voting interest in the air carrier or is owned by an agency or instrumentality of a foreign state". DHL rival UPS says: "This legislation redefines UPS's long-standing concern over Deutsche Post's ownership and control of DHL Airways and the need for the DoT to provide greater transparency and to appoint an independent administrative law judge to review this matter."

Foreign ownership
Under the clause, DHL Airways would qualify as foreign-owned, as DHL Worldwide Express provides more than 50% of revenue, and it both owns a voting stake in DHL Airways (25%) and is itself owned by an agency of a foreign state (Deutsche Post). Its rivals argue that even if DHL Airways were 100% US-owned and staffed, as long as its major customer was DHL Worldwide Express, it would still be regarded as foreign-controlled.

DHL Airways has unveiled a management buyout scheme in which a US group led by its chief executive John Dasburg plans to buy 100% of the airline, including Deutsche Post's 25% stake. The deal is set to close on 30 June, when DHL Airways will rebrand as Astar Air Cargo.

Attorneys for FedEx and UPS argue that the Dasburg purchase and name change do not alter their case, which is based on the fact that most of DHL Airways' revenue comes from a foreign source. "After you change the name, you still have the exact same situation," says a UPS attorney. "All of the underlying factors are still relevant."

DHL Airways is vehemently defending its status as a US carrier. Ray Lutz, vice-president of business development and strategic planning, says DHL will "absolutely defend who we are and what we are" and will work to stop efforts to redefine how airlines are certified in the USA.