



**WORKING PAPER**

**WORLDWIDE AIR TRANSPORT CONFERENCE (ATCONF)**

**SIXTH MEETING**

**Montréal, 18 to 22 March 2013**

- Agenda Item 1: Global overview of trends and developments**
- Agenda Item 1.1 Industry and regulatory developments**
- Agenda Item 2: Examination of key issues and related regulatory framework**
- Agenda Item 2.1 : Market access**

**PROPOSALS FOR MARKET ACCESS LIBERALIZATION**

(Presented by Chile)

**EXECUTIVE SUMMARY**

This working paper summarizes Chile's experience with market access liberalization and presents some proposals for ICAO to adopt measures to support/promote liberalization. It also proposes the text for a Multilateral Agreement on Liberalization of International Air Transport.

**Action:** The Conference is invited to agree to the recommendations presented in paragraph 4.

**References:** ATConf/6 reference material is available at [www.icao.int/meetings/atconf6](http://www.icao.int/meetings/atconf6).

**1. CHILE'S EXPERIENCE WITH MARKET ACCESS LIBERALIZATION**

1.1 Chile's experience is based on a commercial air policy which aims to ensure that the country has the best air connectivity, namely the highest quantity of flights possible, without any cost to the State, irrespective of the nationality of the air carrier operating these flights. This was established in law back in 1979 and has applied unchanged ever since. This policy consists of a minimum amount of intervention from the authority in commercial matters, while proposing full opening of the skies to all States on a reciprocal basis, including cabotage.

1.2 As a result of this policy, Chile currently has open skies agreements for the 3<sup>rd</sup> and 4<sup>th</sup> Freedoms with more than 40 States. Out of this total, the open skies agreements include the 5<sup>th</sup> and 6<sup>th</sup> Freedoms with more than 30 States and the open skies agreements include the 7<sup>th</sup> Freedom with more than 20 States from this group, and the 8<sup>th</sup> and 9<sup>th</sup> Freedoms or cabotage with more than 10 States. The Chilean experience has been a successful one. Every time Chile has agreed with a State to lift restrictions, especially those related to the 5<sup>th</sup> Freedom, air operations with this State have increased. Another result of this commercial air policy has been the positive development of the industry in Chile on an entirely private basis, without any kind of State support. The statistics show that, relative to its number of

<sup>1</sup> Spanish version provided by Chile.

inhabitants, Chile has more air traffic (by a factor of 0,75) than most of the States in the Latin American region.

1.3 Chile's experience shows that the restrictions maintained by certain States to protect the market for their national air carriers actually means a loss of connectivity and a loss of development opportunities, that affect both the foreign carrier's State trying to introduce new flights and the State that is maintaining these restrictions. There is no easy explanation for this situation in States which pursue free market economic policies in all spheres of their economies except air transport, while continuing to restrict competition between airlines - a position which is not well-founded.

1.4 There is inconsistency between these public policies, since on the one hand, efforts are being made to promote tourism, while on the other hand, operations by foreign airlines that would increase tourism are being restricted; airports are being privatized and asked to become self-financing but foreign airlines are being prevented from increasing flights to these airports. All of the above can only be explained in terms of problems with asymmetric information.

## 2. DISCUSSION AND PROPOSALS

2.1 **Revise ICAO's statistical system.** One influencing factor on the maintenance of these restrictions is that air traffic statistics do not reflect the size of the markets. The statistics collected and processed by ICAO and almost all of the States only record the number of passengers that travel between the origin and destination of a given flight but this number does not always coincide with the origin and the final destination of the passengers. For many international routes, the majority of the passengers on a flight are not travelling to the flight destination but are travelling on further with connecting flights.

2.2 As a result, during bilateral negotiations, States that maintain restrictive policies often call on their counterparts to prove that there has been an increase in traffic that would justify new flights. That is, they insist that their counterparts prove that the size of the air transport market has increased between the two countries. If this increase has mainly come about as a result of connecting rather than direct flights then there is no way of proving this, and thus, their counterparts are unable to obtain an increase in the number of flights.

2.3 Therefore, the statistical systems need to be improved to truly reflect the size of markets, which is what is really being negotiated during bilateral negotiations, although one rarely knows the scale of what is being negotiated. However, airlines do have this information. It is proposed that ICAO should revise the criteria that apply to the collection and processing of air traffic statistics so that this traffic can be measured in accordance with passengers' origin and final destination.

2.4 **Conduct studies on the costs and benefits associated with these restrictions on international air transport.** Considering that ICAO has already developed and approved recommendations at the Fifth Worldwide Air Transport Conference in 2003 for States to open up their markets, and considering that the support which ICAO could give to facilitate free market access policies should consist in providing information to States about the economic value of air transport for each State's economy and the cost which it represents for each economy when a foreign carrier wishes to operate an international flight and is prevented from doing so. That is, the cost to States' economies when they continue to impose restrictions on air transport.

2.5 The proposal would be for **ICAO to conduct studies** on these costs and benefits so that States could see them before bilateral negotiations take place on traffic rights. It is also proposed that ICAO recommend that States conduct these studies themselves on the basis of the guidelines provided to them by ICAO.

2.6 **Registry on the degree of opening of the skies.** It is proposed that ICAO should set up a registry on the degree of opening of the skies underway in States through their air service agreements; this could be used as information for States about the actions being undertaken in other countries in this field. It would seek to compile information that countries voluntarily submit to ICAO.

2.7 **Multilateral Agreement on Liberalization.** It is proposed that ICAO develop a Multilateral Agreement on Liberalization of Air Services. Some of the bilateral open skies agreements that are currently in use could be used as a model for this purpose. However, it is suggested that one should also consider the possibility of creating a multilateral agreement which restricts itself to the essential elements of liberalization. An agreement of this type would have the advantage of simplifying liberalization, since negotiations on bilateral open skies agreements often become cumbersome because of discussions on lengthy clauses that are never applied in practice.

2.8 It is proposed by the Secretariat (ATConf/6-WP/13, paragraph 4.4 refers) , that ICAO assume a leadership role in developing multilateral approaches, such as a multilateral agreement on market access liberalization. Paragraph 4.5 of WP/13 also points out that this would be quite a complicated task for ICAO to perform. Given all of the above, we believe that the text that we are proposing for a Multilateral Agreement would avoid this complexity because each State would only need to define its position on market access in order to be able to sign it. All of the other subjects that are normally found in a bilateral agreement would remain within the scope of bilateral agreements, as has been the case up until now.

2.9 One possible model for a simplified multilateral agreement is presented hereafter. It has only six articles but it covers the elements that really matter the most when it comes to liberalization and it refers to both joint passenger and cargo services and all-cargo services. No routes schedule is needed because all routes are open. This multilateral agreement would co-exist alongside bilateral agreements but would take precedence over them for the subjects contained in the multilateral agreement, unless the bilateral agreements have greater skies openness. This model liberalizes passenger flights up to the Sixth Freedom of the Air, and up to the Seventh Freedom for cargo. It could also be opened for signature on an optional basis in a second version, which would only liberalize cargo services up to the Seventh Freedom, and would only entail changing the relevant parts of Article 1. No reserves would be allowed under this multilateral agreement apart from on Articles 2 and 3, not in order to change them, but rather only in order to exclude them from the Agreement. ICAO would be the Depositary of the Agreement.

### 3. **DRAFT MULTILATERAL AGREEMENT ON LIBERALIZATION OF INTERNATIONAL AIR TRANSPORT**

3.1 *The Parties to this Agreement (hereafter referred to as the Parties) / Desiring to promote an air transport system based on competition between airlines in the market with a minimum amount of government intervention and regulation; / Desiring to facilitate expansion of air transport opportunities on a non-discriminatory basis. / Taking note of the Convention on International Civil Aviation opened for signature in Chicago on the seventh of December 1944 (hereafter referred to as 'the Convention'); / Have agreed to the following:*

**ARTICLE 1.— Granting of Rights:** *Each Party grants the following rights to the other Parties for the provision of air services by the other Parties' air carriers: the right to provide scheduled and non-scheduled passenger and cargo or all-cargo services between the territories of the Parties (3<sup>rd</sup> and 4<sup>th</sup> Freedoms), between the territory of the other Parties and any third State either directly (5<sup>th</sup> Freedom) or transiting through its home territory (6<sup>th</sup> Freedom), with no requirement for the cargo services to include*

any point in the territory of the State designating the airline (7<sup>th</sup> freedom); without any restrictions as regards routes, frequency and flight material, which may be owned, leased or chartered.

**ARTICLE 2.— Designation and Authorization:** 1. Each Party will have the right to designate as many airlines as it wishes to carry out air transport operations under this Agreement and to revoke or change such designations. These designations will be sent in writing to the corresponding Party through diplomatic channels, as well as to the Depositary. / 2. The aviation authorities of one Party may require that an airline designated by another Party demonstrate that it is qualified to meet the conditions established by the standard laws and regulations reasonably applicable by these authorities for air transport operations. / 3. Each Party will have the right to withhold or revoke the designation referred to in paragraph 2 of this Article or to impose conditions upon a designated airline which it deems necessary for exercising the rights specified in Article 1 of this Agreement, if the airline is not incorporated and does not have its main office in the territory of the designating Party or if this Party does not have the regulatory control.

**ARTICLE 3.— Commercial Opportunities:** 1. When operating or maintaining the authorized services on the agreed routes, any airline designated by one of the Parties may conclude commercial agreements such as Code-sharing and Block Space with airlines designated by any of the Parties and/or airline(s) from a third State provided that (i) the airlines that enter into these commercial agreements have the relevant traffic rights; and (ii) the airplane tickets and any other document which, in keeping with the air transport conditions and/or the airway bills, clearly establish for the purchaser or user of the respective service which airline will actually operate each segment of the service and with which airline he/she will have this commercial-contractual relationship. / 2. When operating or maintaining the authorized services on the agreed routes, any airline designated by one of the Parties may also conclude commercial agreements such as: 'interchange' of aircraft; aircraft lease agreements ('dry lease'); aircraft subleases; aircraft 'lease for hours' agreements and aircraft lease agreements with crew included, which may or may not include insurance and maintenance ('Wet Lease'), with airlines designated by any of the Parties and/or airline(s) from a third State.

**ARTICLE 4.— Competition between Airlines:** 1. Each designated airline will be free to determine the level of transport capacity which they wish to provide. / 2. None of the Parties will unilaterally restrict the traffic volume, frequency or scheduling of the service or the type or types of aircraft operated by the airlines designated by the other Party, except where necessary for customs, technical, operational or environmental reasons, in accordance with the standard conditions in line with Article 15 of the Convention and always on a non-discriminatory basis.

**ARTICLE 5.— Denunciation:** The Parties may denounce this Agreement by written notification to the Depositary. Denunciation will take effect 12 months after the Depositary has received this notice unless the Parties notify the Depositary in writing that they wish to withdraw their notice before this deadline expires.

**ARTICLE 6.— Entry into force:** This Agreement will enter into force on the date when it has been signed by at least four States.

#### 4. RECOMMENDATIONS

4.1 The Conference is invited to:

- a) request ICAO to revise the criteria that apply to **air traffic statistics**, so that they measure the size of markets in accordance with the origin and final destination of the passengers;

- b) request ICAO to conduct studies on the **benefits and costs of the restrictions** on international air transport;
- c) request States to also conduct studies, as described in point b), on the basis of criteria provided to them by ICAO;
- d) invite ICAO to establish a **registry on the degree of openness of the skies** being achieved by countries through their air service agreements; and
- e) urge ICAO to develop a **Multilateral Agreement on Liberalization of International Air Transport** on the basis of the text proposed above.

— END —