

Maximizing Civil Aviation's Economic Contribution *Challenges and Potentials*

Montreal, Canada, 6 – 8 June 2005

Information Paper

CO-OPERATION IN THE REGION UNITING THE CARIBBEAN BY AIR

(Prepared by Association of Caribbean States)

1. Since ages the communication within the Caribbean region has been difficult.
2. The economic growth of the developing countries in the region, many small others very small has been hindered by the lack of adequate communication by air and by sea. The routes are concentrated to and from the bigger states or centres outside the region. The possibilities for economic development are limited and dependency on international carriers is common with all the negative consequences thereof. Most of the states are heavily dependent on the tourism industry and are thus very vulnerable. The local markets are too small for a self-supporting airline. In summary there is a serious lack of communication in the region, the airlines of the region are constantly in financial crises and all this hampers the economic development of the states.
3. In 1999 the Second Summit of the ACS identified the tourist industry as the engine for the economic development of most of the member-states and associate members. An important tool for the promotion of this industry is transportation. The Programme Uniting the Caribbean by Air and Sea was adopted to promote viable and efficient means of transportation in the region. Several efforts have been made in the past however the many differences in culture, demographic, geographic and economic development rendered these efforts unsuccessful.
4. Aruba, one of the associate members that is having a positive experience with a liberal air transport policy and is a success story in the tourist industry in the region presented a draft multilateral air transport agreement to the members of the Transport Group of the ACS. The negotiations were painstaking and progress was very slow. After more than 4 years the states agreed on finely woven instrument.
5. The preamble expresses the willingness of states to create a legal framework for the establishment of the sustainable tourism zone in the region. The articles on granting of rights were the stumbling blocks at every meeting. Especially fifth freedom right was a very controversial issue. A solution was found in the text where exchange of these rights could be on a multilateral or on bilateral/reciprocal basis. Even after granting the fifth freedom right the authorities can suspend the operations of an airline based on the consideration that these are detrimental to the national interests. What these are has not been defined though protection of the national airline surely is high on the list.



World Bank



International
Civil
Aviation
Organization



Air Transport
Action Group

6. Non-scheduled passengers or cargo operations could only be considered positively when these do not affect or constitute unfair competition for scheduled operations. For the promotion of multi-destination of tourism parties agreed on the exchange of stop over rights. In the same paragraph they agreed on sixth freedom rights.

7. As said before the fine line that holds the agreement together is in this article. The consensus of the parties was to accept designation of only two airlines. But as most of the parties have one or two airlines, this should not be a problem. The solution when there are more national airlines is to share the markets between them. And a designated airline could be a truly regional airline as it has to be substantially owned and control by the parties (casu quo the states), its nationals or both. The headquarters have to be in the territory of the designating party. The islands members of the ACS which do not have an airline can make use of the Community of Interest-resolution of ICAO and designate an airline of the economic group of the region. For practical reasons the responsibility for compliance with Safety and Security aspects of the operations of the airline remains with the state issuing the air operator's certificate. Revocation, suspension or limitation of the operating permit of an airline can be based on non-compliance with requirements of ownership and effective control, security, safety and national laws.

8. The usual soft rights are granted and transfer and remittance are to be in accordance with the legislation in force in each country. Other cooperative marketing arrangements like blocked space, code sharing or leasing between airlines of parties are permissible. Computer reservation systems will be governed by the ICAO Code of Conduct. There will be fair and equal opportunity to compete and parties shall take all appropriate actions to avoid and eliminate all forms of unfair competitive practices. Airlines can determine the frequency and capacity of their operations; authorities can intervene only when safety or security reasons so require. Schedules shall be filed for approval.

9. The tariffs to be applied shall be approved according to the country of origin principle, this without prejudice to the provisions of the national laws. Amending this agreement is very cumbersome as it has to be by consensus and shall enter into force when the amendment is ratified by one third of the parties to the agreement. The agreement itself shall come into force when one third of the member states and associate members of the ACS (this is nine states) has deposited their instruments of ratification with the Government of Colombia.

10. As said before there was fine architecture at work not to disturb the maze of existing published and unpublished, confidential operating permits, arrangements, memoranda of understanding, administrative agreements, protocols, bilateral and multilateral agreements in force or dormant or the renewal thereof among parties or among parties and non-parties.

11. As with the geographical size of the member-states there is an enormous variety of air transport policies and agreement in the ACS region. From restrictive to outright liberal from agreement between a group of states like Organisation of Eastern Caribbean States (OECS), CARICOM, Central American States and Comunidad Andina de Naciones, from states with a heavily government subsidized little airline to a regional operating airline, from economy that depends for more than 70% on the tourist industry to a tourist industry that depends for a greater part on foreign airlines.

12. Throughout the agreement one can note the reluctance of members to let loose of their national attachment and feel a citizen of the Greater Caribbean. It was difficult to have

consensus as the issues were viewed from a horizontal perspective. Some members had a real problem to stay focused on the goal of the agreement than rather on their national instruments. There are at least seven occasions in the agreement where parties can take measures to safeguard/to protect their own airlines/interests. Remarkably many of these states have liberal “open skies” bilateral air transport agreements in force with states out of the region and require not protection for their national airlines. The criteria what constitute national interests seems to vary depending on the neighbour states.

13. That every state party to the agreement has the tools to restrict the operations of the little regional airlines in the name of national interests, can hamper the development of a system that could meet the growing demand for efficient services at a reasonable price, and constitute a barrier to both economic and trade development and the growth of interregional travel. Up to now 15 states has signed the agreement and there is a growing optimism that more and more members are becoming aware that only with a position of give-and-take they could achieve the goal of uniting the Caribbean and promote sustainable tourism, trade and economic development.

Mr. Agustin Vrolijk
Director of Foreign Affairs Aruba
LLM McGill University
Institute of Air and Space Law
May18, 2005