



ASSEMBLY — 35TH SESSION

ECONOMIC COMMISSION

Agenda Item 27: Regulation of international air transport services, and outcome of the fifth Worldwide Air Transport Conference

LIBERALISING AIR CARRIER OWNERSHIP AND CONTROL

(Presented by Singapore)

SUMMARY

Singapore recognizes the changing external environment and is supportive of the recommendations by ICAO and IATA’s call to broaden the liberalization of the airline designation criteria. In particular, this paper discusses the need for an open and consultative approach by Contracting Parties, with the view to understanding and identifying solutions to their unique concerns. Such an approach will pave the way for Parties to find common ground for adapting existing frameworks for liberalization without compromising their respective interests.

Action by the Assembly is in paragraph 4.

1. INTRODUCTION

1.1 Traditionally, national airlines have been closely tied to their respective governments for a variety of reasons including safety and security regulation, prevention of flags of convenience (or “third party free-riding¹”) and anti-competitive behavior, national defence, as well as retention of foreign exchange earnings and jobs in the country. These factors have been commonly cited as reasons for the retention of the requirement in most bilateral Air Services Agreements (ASA) for an airline to be substantially owned and effectively controlled by the nationals of the designating party.

¹ Viz., a foreign airline from Country A setting up an airline(s) in Country B or using Country B’s traffic rights with a third country, without Country A giving up anything in return.

1.2 Over the past two decades or so, there has been a trend towards airline privatization due partly to the wider trends of globalization and liberalization. Regional economic unification has also to some extent blurred the boundaries of airline ownership and control. On the commercial front, airlines are increasingly seeking new partners and alliances (often taking equity stakes in one another) to spread risks and pool together complementary skills and resources. Foreign capital injections are also important to cover the immense capital requirements of this industry.

1.3 Singapore recognizes the changing environment and is supportive of the recommendations by ICAO and IATA's call in their respective working papers (A35-WP/9, A35-WP/64) for the broadening of the liberalization of airline ownership and control. In fact, with temporary setbacks from the events of September 11 and the recent SARS crisis, we believe that it is all the more critical for airlines to have the commercial flexibility to plan with certainty and move with agility. States should hence consider proactively removing regulatory obstacles under their ASAs, including the requirement for airlines to be substantially owned by its designating country, its nationals, or both.

2. **SEEKING COMMON GROUND IN LIBERALISATION**

2.1 Draft model clauses for the use by Contracting States at their discretion have been developed by ICAO. Given the different concerns and circumstances unique to each State, an open and consultative approach is important for States to share their mutual concerns with the view to finding a suitable pace and format to liberalise airline ownership and control.

2.2 In line with ICAO's recommendation endorsed at the Fifth Worldwide Air Transport Conference, Singapore initiated proposals to move away from the "substantial ownership" and "effective control" criterion, by amending the airline designation clause in a number of our ASAs to one based on "principal place of business" and "effective control". To date, Singapore has managed to liberalise airline designation provisions for more than 20% of our ASAs.

2.3 For example, under the Singapore-United Arab Emirates (UAE) ASA, the designation criteria was amended to allow for Gulf Air's operations under the ASA, so long as its incorporation and principal place of business remained in Oman, the UAE, Qatar, or Bahrain and effective control remained in the hands of the governments of the said States and/or their nationals². Under the Multilateral Agreement on the Liberalisation of International Air Transportation (MALIAT)³, the "substantial ownership" criterion was removed, albeit with certain conditions.

2.4 The above would not have been possible if (a) the "more liberal" Party adopted an "all-or-nothing" approach or (b) if the "less liberal" Party had rejected the liberalisation proposal from the onset. On a similar note, when considering new proposals on airline designation provisions, States should attempt to openly share their views and concerns if any, with the view to making at least some mutually acceptable progress.

² This was in view that Gulf Air was jointly owned by 4 Gulf States. The arrangements were provided for under a Memorandum of Understanding.

³ The parties currently under MALIAT are Singapore, Brunei, Chile, New Zealand, Peru, Samoa and USA.

3. CONCLUSION

3.1 In summary, Singapore is supportive of moves by ICAO, the Member States and the airline industry to liberalise the airline designation criteria under the ASAs to provide for maximum commercial flexibility for airlines and as part of the larger goal toward air services liberalisation. It is our view that, in applying the existing frameworks, Contracting Parties should make a conscious effort to adopt an open and consultative approach with the view to liberalising airline ownership and control while best addressing their unique concerns. Any move toward liberalising air carrier ownership and control, even if partially so, should be welcomed as a first step toward the removal of constraints under the ASAs.

4. ACTION BY THE ASSEMBLY

4.1 The Assembly is invited to take these views into account in its consideration of this item.

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