



INTERNATIONAL CIVIL AVIATION ORGANIZATION

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## ASSEMBLY — 35TH SESSION

### ECONOMIC COMMISSION

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

#### **LIBERALIZATION OF AIR TRANSPORT SERVICES AMONG ACAC MEMBERS**

(Presented by Oman on behalf of the  
Members of the Arab Civil Aviation Commission (ACAC)<sup>2</sup>)

#### **SUMMARY**

This working paper reports on the measures taken by the Members of the Arab Civil Aviation Commission (ACAC) for the liberalization of inter-Arab air transport services within the context of the ICAO Fourth World-wide Air Transport Conference (1994). The Conference had recognized, as part of its recommendations, that liberalized arrangements at the sub-regional or regional level represented valuable experience in relation to the content, process and structure of regulatory change, and that such experience should be brought to the attention of States. The process of liberalization has also been guided by the Global Declaration of Principles of the ICAO Fifth Worldwide Air Transport Conference (2003) which stipulated that each State should continue to inform ICAO of international air transport developments, including the liberalized arrangements that have been taken at the different levels.

Action by the Assembly is in paragraph 5.

<sup>1</sup> English and Arabic versions provided by ACAC

<sup>2</sup> Bahrain, Egypt, Iraq, Jordan, Lebanon, Libyan Arab Jamahiriya, Morocco, Oman, Qatar, Saudi Arabia, Sudan, Syrian Arab Republic, Tunisia, United Arab Emirates, Yemen and Palestine

## 1. INTRODUCTION

1.1 In discussing the future regulatory content, the Fourth World-wide Air Transport Conference stressed the inevitability of change and that such change must be achieved in a planned, orderly and progressive way that respects equality of opportunity, and that cooperation among States will assist in effecting the required change.

1.2 At the regional Arab level, specialized federations and bodies were invited by the Arab League Economic and Social Council in 1996 to develop scenarios on the extent of their participation in the establishment of the greater Arab free trade area. Thus, a panel comprising members of the ACAC Air Transport Committee was formed to formulate proposals in the air transport field. The panel produced a number of recommendations that were in harmony with ICAO's recommendations on the progressive liberalization of air transport policies. This was to be done through the development of a time table for air transport liberalization among the Member States, accompanied by the necessary legal mechanism for the implementation of the programme.

## 2. THE REGULATORY CONTENT OF LIBERALIZATION

2.1 The programme for the liberalization of air transport services, as approved by the Member States, consists of the following phases:

- a) Phase 1, starting in November 2000, consists of deregulating cargo and non-scheduled passenger operations;
- b) Phase 2, starting in November 2002, consists of deregulating Third and Fourth freedom rights for passenger traffic by allocating capacity 60% and 40% between the parties;
- c) Phase 3, starting in November 2004, involves unrestricted deregulation of Third and Fourth freedom rights for passenger traffic;
- d) Phase 4, starting in November 2006, consists of deregulating Fifth freedom rights; and
- e) The programme was approved by the ACAC Assembly and the Council of Arab Ministers of Transport. It received strong political endorsement by the Arab Summit Conference in Beirut in 2002.

## 3. IMPLEMENTATION MECHANISM

3.1 A legal mechanism was established based on the bilateral regime for the signing of a Memorandum of Understanding between any two States wishing to pursue liberalization in respect of the first three phases of the programme. To cover the fourth phase, a regional agreement, comprising all components and controls of the liberalization process, has been developed.

3.2 In spite of initial concerns that the mechanism was not binding on all parties, there has been a positive response to the liberalization of cargo and non-scheduled passenger transport among several

Member States on a bilateral basis. This came about thanks to the continuous follow up actions by ACAC which has been stressing the need for the effective implementation of the liberalization programme and the circulation of reports showing status of implementation. On their part, Member States have shown positive cooperation and a desire to keep up with the developments in the air transport industry. ACAC surveys have also shown that a number of other Member States have complied with the provisions of the second phase by granting Third and Fourth freedom rights at levels ranging between 60% and 40%. Some Member States have taken liberalization measures that went beyond those specified in the programme, thus demonstrating a clear desire to embrace liberalization.

3.3 The regional agreement contains a number of significant elements of economic regulation including the following:

- a) **Air Carrier Ownership Criteria.** The agreement provides for the principles of substantial ownership and effective control of one or more of the Member States or their nationals, subject to full compliance with civil aviation safety and security criteria as contained in the recommendations of the Fifth Worldwide Air Transport Conference.
- b) **Multiple Designation.** The agreement allows a Member State to designate one or more carriers to operate air transport services among the parties.
- c) **Market Access.** Liberalized market access includes granting of scheduled traffic rights under the five freedoms for traffic to and from the international operational points as announced by each Arab State party to the agreement, with the exception of cabotage. The procedures for the withdrawal or revocation of authorization shall be subject to consultations; such withdrawal or revocation however, shall take place immediately in case of any violation of the criteria regarding substantial ownership, security and safety.

Capacity — There are no restrictions on capacity except for environmental or technical considerations or other considerations related to security and safety.

Leasing — No restrictions apply in respect of aircraft leasing subject to compliance with safety and security criteria.

Non-scheduled operations — An annex concerning non-scheduled transport of passengers, cargo and mail was added to the agreement to allow for flexibility in developing this sector independently from scheduled operations.

- d) **Fair Competition and Safeguards.** Competition rules and safeguards have been included in an annex to the agreement to guard against any practices that may limit market access or undermine competition laws. The annex also includes safeguards of fair competition to insure the viability of Arab carriers and their participation in the international air transport market.
- e) **Consumer Interests and Air Transport Product Distribution.** Under this heading provisions are included to insure compliance with all the regulations and legislation protecting consumer interests. A clause has also been added governing issues of airline business and the application of an Arab Code of Conduct for the regulation and

operation of computer reservation systems, based on the ICAO Code of Conduct, and taking into account the rapid development of product marketing over the Internet.

- f) **Government Subsidies.** The draft agreement recognizes that subsidies may have adverse effects on air transport services offered by other airlines. Accordingly, it bans the provision of State subsidies to their airlines, unless warranted by exceptional circumstances. In the latter case, such subsidies should be channelled through a transparent and specific mechanism, currently under development by ACAC, which would allow affected States to request consultations in case their airlines have been adversely impacted as a result of subsidies given by any State to its airlines.
- g) **Dispute Settlement.** This is a comprehensive mechanism comprising progressive dispute settlement means (consultation, mediation and arbitration). It covers all types of disputes arising from the interpretation or application of the agreement or its annexes.
- h) **Transparency and Registration.** As a means to enhance transparency, the agreement and any amendment thereof shall be deposited with the General Secretariat of the Arab League and ICAO.

3.4 The draft regional agreement was finalized after review by the legal authorities of the Member States. It was approved in July 2004 by the ACAC Assembly. A diplomatic conference of civil aviation Ministers and high officials will be convened before the end of the year to review and sign the agreement. It is envisaged that the agreement will apply to the States that ratify or accede to the agreement in accordance with the legal and constitutional formalities of the State. The draft provides that the agreement would enter into force upon the ratification thereof by five States. The objective is to avoid some of the unsuccessful attempts that occurred in the past. Accordingly, States that find themselves ready to liberalize will apply the agreement and would be followed by the other States based on their conviction that it is in their interest to do so.

#### 4. OBJECTIVES OF THE REGIONAL AGREEMENT

4.1 To facilitate full liberalization by removing all constraints on market access and promoting the transport of passengers, goods and capital and promoting tourism among Arab countries.

4.2 To respond to the general trend that was adopted by the Fourth and Fifth Worldwide Air Transport Conferences, i.e., for the development of a practical framework for the progressive liberalization of international air transport and providing for safeguards to ensure fair competition, safety and security.

4.3 The promotion of air transport liberalization in an orderly manner on the basis of equal rights. The regional agreement includes a package of traffic rights and facilities to the airlines of the States parties to the agreement. The agreement has thus covered all issues relating to the granting of rights and authorizations, competition, charges, subsidies, settlement of differences, safeguards and post implementation follow-up, etc. This means that the airlines of the Member States will receive equal treatment. No State would thus claim a distinct status for its airlines as is now the case where different types of protection and discrimination have been widespread and certain airlines have been receiving subsidies to the exclusion of others.

4.4           Effective contribution by the civil aviation sector in the promotion of the greater Arab free trade area, the establishment of which has been proclaimed among the Arab States.

4.5           To ensure harmony with the requirements of the General Agreement for Trade in Services (GATS) in respect of liberalization of trade in services related to air transport between the Arab States (soft rights) with a view to the realization of economic integration.

4.6           To address the steady growth of air transport among the Arab countries and between the latter and other regions.

## 5.       **ACTION BY THE ASSEMBLY**

5.1           The Assembly is invited to:

- a) take note of the experience of the Arab States members of ACAC in the field of air transport liberalization;
- b) request ICAO's assistance in implementing the liberalization of air transport in the Arab States in accordance with the recommendation of the Fifth Worldwide Air Transport Conference.

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