

**WORLDWIDE AIR TRANSPORT CONFERENCE: CHALLENGES AND
OPPORTUNITIES OF LIBERALIZATION**

Montreal, 24 to 29 March 2003

**Agenda Item 2: Examination of key regulatory issues in liberalization
2.4: Consumer Interests**

CONSUMER INTERESTS

(Presented by the Secretariat)

SUMMARY

The paper reviews recent developments in consumer interest issues, particularly as regards air passenger rights. It discusses various options available for States and the airline industry in responding to these issues, and proposes some conclusions for action by States and ICAO.

Action by the Conference is in paragraph 6.1.

REFERENCES

Doc 9587, *Policy and Guidance Material on the Economic Regulation of International Air Transport*

Doc 9626, *Manual on the Regulation of International Air Transport*

1. INTRODUCTION

1.1 Consumer interests cover many issues, including air “passenger rights” and the contractual relationship between air carriers and their users. Furthermore, the subject has many implications: at the government level is the need for, and nature of, regulatory action; at the industry level there are numerous competitive, cost and operational consequences as well as issues of self-regulation; and globally the subject raises questions of harmonization and, potentially, problems of extra-territoriality when legal regimes differ and are applied beyond territorial jurisdictions.

1.2 Since the 1994 World-wide Air Transport Conference (AT Conf/4), consumer interests have received increasing attention. Along with the continuing liberalization of air transport regulation, the protection and improvement of airline passenger rights, for instance, has achieved greater importance, particularly but not exclusively in major markets. For airlines of developing States operating to and from major markets, the treatment of consumer interests has longer term consequences for their competitive viability. Many States are looking to a wide range of measures to address consumer interests, including new regulations and voluntary commitments (i.e. non-legally binding self-regulation) by airlines. The paper reviews recent developments in and implications of consumer issues dealing with passengers, and also addresses the contractual aspects of consumer interests. The issue of air shippers is not specifically covered in this paper because of the current lesser attention exhibited by States.

2. PREVIOUS ICAO WORK

2.1 Prior to AT Conf/4, ICAO had already done some work including the development of guidance material on consumer interests in areas such as conditions of carriage, fare guarantee, baggage, tariff disclosure, denied boarding, and a Code of Conduct for the Regulation and Operation of Computer Reservation Systems (CRSs). This guidance may be found in ICAO's *Policy and Guidance Material on the Economic Regulation of International Air Transport* (Doc 9587). Guidance material for users of air transport was also issued to assist States in publishing or encouraging the publication of the booklets intended to inform air passengers and shippers of their rights and obligations (see ICAO's *Manual on the Regulation of International Air Transport*, Doc 9626, Appendix 5). Furthermore, Annex 9 of the Chicago Convention provides Contracting States with the means of enhancing customer service quality, i.e. to provide the users of air transport with quality service, which means being allowed to proceed through airports with minimal delay and difficulty. AT Conf/4 also addressed consumer issues to some extent, notably in the context of CRSs and codesharing. The Conference broadly supported that any future work by ICAO on new regulatory arrangements should include the consideration of consumer interests. As follow-up actions of AT Conf/4, the ICAO Code of Conduct for the Regulation and Operation of CRSs was updated and, along with two Model CRS Clauses for use by States, was adopted by the Council in June 1996; and recommendatory guidance on the consumer protection aspects of codesharing was developed and approved by the Council in 1997 (see Doc 9587).

2.2 At the 33rd Session of the Assembly in 2001, the issue of consumer interests was again considered. The Economic Commission expressed its support for ICAO to continue to monitor developments, taking into account various existing regulatory regimes and the voluntary commitment approach in order to deal with problems affecting consumers and to prevent the risk of different regimes emerging at the international level. However, the view was expressed that it was premature to determine which ongoing regime should be used as a global model if ICAO should initiate action to harmonize different regimes. The Commission agreed that the Council should continue to monitor developments in this regard and to pursue the issue within the framework of ATConf/5.

3. RECENT DEVELOPMENTS

3.1 Despite the emphasis given in liberalization to opening up markets to meet user needs, the focus by airlines on cost pressures and competitive market forces has sometimes led to an adverse impact on consumer interests. Furthermore, infrastructure limitations with airspace congestion and passenger handling problems at some airports have ensured the continued public attention given in recent years to passenger rights in particular. In response to a perceived decline in customer services, a significant number of States have adopted regulatory measures that address some of the issues. Denied boarding compensation, bans on

smoking, on-time performance statistics and access for disabled passengers are a few examples of specific regulatory attention. Some governments have also required airlines, *inter alia*, to ensure that all tariffs are made available to the public, to disclose information on cancellation policies, and to avoid misleading advertisements. In addition, the Warsaw Convention liability system and, when it enters into force, the Montreal Convention (1999), deal with the liability of air carriers in the case of accidents, loss of baggage and delays.

3.2 On the issue of passenger rights, quality of service offered by airlines has not always met consumers' expectations. Growing passenger dissatisfaction with the service conduct of airlines in recent years, such as inadequate handling in case of flight delays and cancellations and insufficient information on an airline's commercial and operational conditions, has generated political pressure on airlines to provide a more comprehensive set of rights for their customers. Authorities in the United States, followed by the European Commission, have made efforts to clarify and strengthen the existing passenger rights and also to create new rights through voluntary commitments by airlines so that legislative measures are not necessitated.

3.3 In the United States, the Air Transport Association (ATA) and its member airlines, working with Congress and the Department of Transportation (DOT), developed the Airline Customer Service Commitment in June 1999. The Aviation Investment & Reform Act (AIR-21) in April 2000 introduced a number of consumer-related measures and an investigation requirement, and following an audit investigation by the Inspector General, each airline incorporated the commitments into its contract for carriage in June 2001 so that the commitments would become legally enforceable by a customer against an airline.

3.4 In Europe, the European Commission defined an overall approach aimed at reinforcing the rights of air passengers in June 2000, proposing new voluntary commitments and enforcement legislation. As for voluntary commitments, airlines and airports in the member States of the European Civil Aviation Conference (ECAC) developed two codes: the Airline Passenger Service Commitment and the Airport Voluntary Commitment on Air Passenger Service. These two codes became effective in February 2002. As for legislation, the Commission issued a proposal in December 2001 covering stronger measures for denied boarding, cancellation of flights and long delays. The Commission also started a consultation process about service quality indicator reports in December 2000, and about airline contracts (including conditions of carriage focussing in particular on the industry standards referred to in paragraph 3.6 below) in June 2002.

3.5 Governments in other regions have also been considering similar measures; and several States, including Australia, Canada and New Zealand, apply general consumer protection laws/rules that cover a wide range of cross-functional issues involving commercial practices. In Latin America, the Assembly of the Latin American Civil Aviation Conference (LACAC) adopted a recommendation, in November 2000, on a consumer protection code for airlines and recommended its adoption in that region.

3.6 On a worldwide basis, the International Air Transport Association (IATA) and its member airlines have developed conditions of contract (Resolution 724), which lay down the contractual conditions applicable to member airlines' international flights as a binding resolution. IATA has also developed conditions of carriage (Recommended Practice 1724), aiming at the harmonization of the general conditions under which passengers travel on inter-carrier journeys. However, RP 1724 focuses on "best practice" but does not bind member airlines so that they are free to set different terms, nor does it apply to domestic flights or to services operated by non-member carriers. In August 2000, RP 1724 was revised in negotiation with certain government authorities to make it more favourable to passengers, though it is awaiting approval by the US DOT. In parallel with the above developments, IATA also adopted a Global Customer Services Framework in June 2000, which is intended as a guide for member airlines in developing their own voluntary commitments. This model code includes improvements that benefit passengers.

3.7 A summary of the airline and governmental responses to some of the more prominent consumer interest issues is provided in **Appendix A** to this paper. The summary also includes relevant cross-references to liability regimes. **Appendix B** to this paper provides additional information on IATA's work on conditions of contract/carriage including a list of the elements covered by the 2000 version of RP 1724.

4. DISCUSSION

4.1 The improvement of service quality can be achieved by competitive response, regulatory measures and/or voluntary commitments. The following discussion addresses the merits of these various options, identifies some of the considerations involved in their application as well as possible national and multilateral approaches to consumer interests.

4.2 **Competitive responses.** Competition in the marketplace can best work to meet consumers' expectation, especially in the areas relating to "value for money", such as seat configuration, in-flight services, meals and e-commerce services. On the basis of their own commercial judgement, airlines provide various combinations of service qualities with prices. Consumers benefit from the availability of differentiated product options, and can switch to competing airlines if a carrier does not meet their expectations. In principle, consumers' comparison shopping should enhance service competition so that the marketplace itself generates better performance. Nevertheless, there exist some instances where competition does not necessarily guarantee a minimum level of service that customers can expect, either directly or indirectly, and below which no carriers should fall. This is particularly true when consumers cannot make an informed choice of airlines in planning their travel arrangements due to the lack of information available to them. Certain elements (for example, the treatment of disabled and special-needs passengers) might not even be a matter of competition between airlines. Also consumers' negotiating position is very weak because they have to accept contractual conditions and business practices decided by airlines and fully pay for the service before actually taking the flight.

4.3 **Regulatory measures.** Concerns about the limits of competitive response have induced several States to take regulatory action and to strengthen passenger rights, create contractual certainty, and make more information clearly and readily available to consumers on a wide range of subjects. These range from airline business practices (such as codesharing, availability of fares, and ticket refund), contracts (such as conditions of carriage, denied boarding, liability provisions, misplaced baggage, and special passenger needs) to operational performance disclosure (such as on-time performance and complaints). However, a major complication with government intervention generally in consumer interest matters is that regulatory measures which tightly define the quality of service may remove a key competitive element, thereby limiting the scope of the service areas where competition might be the best means of improvement. Regulations often also impose additional costs on airlines, thereby affecting airlines' competitiveness, pricing and product differentiation. Furthermore, regulations, once introduced, may be difficult to withdraw or amend promptly according to the change of the situation, and the attempt to regulate one element can incur causing a risk of proliferation of regulations to other elements. Regulation may also incur administrative costs for authorities.

4.4 **Voluntary Commitments.** In order to avoid these potential problems in the regulatory approach, States may therefore choose to rely initially on voluntary commitments by airlines (and service providers if applicable), which are regarded as complementary to the regulatory approach. The airline industry also favours the voluntary commitment approach by outlining service targets or "best practices" which individual airlines may agree to build upon according to the type of services they offer. If voluntary commitments are prevailing and attainable, and the monitoring system is well established, then regulatory measures on subjects covered by the commitments would generally be unnecessary.

4.5 **Consequences of varying responses.** In practice, different levels of interest and response to consumer issues have resulted in the emergence of regimes with similar aims and objectives on passenger rights but with differing regulatory, self-regulatory and contractual requirements in various States or regions. A potential consequence of this patchwork of emerging regimes, as illustrated in **Appendix A**, is that carriers with broader networks, especially ones involving major markets, could face numerous and sometimes conflicting regulatory and contractual requirements, creating potential confusion for airlines and consumers alike. The fragmented system of consumer interest regulatory regimes may also make it costlier for airlines to apply consistent internal training and to maintain adequate communication, and may affect common or compatible industry systems and standards as well as the multilateral interline system. Also, uniformity of standard terms for conditions of contract/carriage, together with the international liability regimes and required ticket notices, would greatly assist in the smooth functioning of interline carriage.

4.6 Another consequence, if the regulatory approach is increasingly applied vis-à-vis voluntary commitments, is that there is a potential risk of extraterritorial application of national (or regional) laws by a State (or a group of States). Although the existing regulatory measures are applied internationally on the country-of-origin basis, a State would wish to apply them irrespective of the origin or destination of the flights operated by its national carriers, or to further extend the scope of application to foreign carriers that pursue their commercial activities in its territory, especially where it considers that foreign carriers could avoid its jurisdiction. This would be the case, for example, if denied boarding regulation covers all the flights to and from its own territory operated by any airlines including the carriers of third countries. It may also be possible that a State would wish to regulate a contract for carriage irrespective of where the contract was concluded, because the development of e-commerce makes it difficult for a State (and the courts) to decide the place where the contract was concluded. However, since the application of national laws with such broad scope would impose obligations on foreign carriers or affect contracts established on the territories of third countries, it would create potential legal uncertainty and raise objections by some States concerned.

4.7 **Multilateral response.** Efforts by a State (or a group of States) to minimize the differences in their regulatory measures would be a possible solution to the problems associated with varying regulatory regimes. ICAO's ongoing monitoring work can assist in this purpose. The more coordinated approach to this issue may be a multilateral approach through ICAO, including the development of a "global code of conduct" on consumer interests covered by regulatory regimes, for optional use by States for their air carriers and service providers. The harmonization of minimum requirements for consumer protection (including the contract regime) that can be applied globally would be in the nature of a minimum floor and could serve to preserve the uniformity of the current international air transport system and to avoid the risk of potential extraterritorial friction. However, given the current evolving nature of this issue and the merits of and emphasis still being given to the voluntary commitment approach, it may be premature to seek global harmonization on the regulatory side. Also, establishing a lowest common denominator globally consistent with existing consumer protection measures would require considerable cooperation and coordination by States, the industry and consumers, all known to have widely divergent interest in this issue, but with no assurances of attainment. Pending a clearer picture on consumer interests that would focus the object of and need for global harmonization, ICAO's monitoring role and dissemination of information on this subject could facilitate the broader harmonization process.

5. CONCLUSIONS

5.1 From the foregoing discussion the following conclusions may be drawn:

- a) as a premise in addressing consumer interests issues, States need to carefully examine what elements of consumer interests in service quality have adequately been dealt with by the current commercial practices of airlines (and service providers if applicable) and what elements need to be handled by the regulatory and/or voluntary commitment approaches. The lists of issues in **Appendices A and B** could serve as checklists of many of the consumer interest issues States may wish to monitor.
- b) States need to strike the right balance between voluntary commitments and regulatory measures, whenever the government intervention is considered necessary to improve service quality. States should rely generally and initially on voluntary commitments undertaken by airlines (and service providers), and when voluntary commitments are not sufficient, consider regulatory measures.
- c) in implementing new regulatory measures, States should minimize the unnecessary differences in the content and application of regulations. Efforts to minimize differences would avoid any potential legal uncertainty that could arise from the extra-territorial application of national laws, without diminishing the scope for competition and hampering the operating standards and procedures for interlining.
- d) ICAO should continue to monitor developments regarding voluntary commitments to and government regulation of consumer interests with a view to providing useful information to States to assist in the harmonization process. Such monitoring should, in due course, enable ICAO to decide whether some form of action at multilateral level, such as the eventual development of a global code of conduct, is feasible or necessary to ensure harmonization of regulatory measures.

6. ACTION BY THE CONFERENCE

6.1 The Conference is invited to:

- a) note the recent developments described in paragraph 3 and the discussion on consumer interest responses in paragraph 4;
- b) review and adopt the conclusions in paragraph 5.1

APPENDIX A

SUMMARY OF VOLUNTARY COMMITMENTS AND REGULATORY MEASURES

Item	Voluntary Commitments by airlines			Legislation/Regulation		International Liability Conventions
	ATA Airline Customer Service Commitment	European Airline Passenger Service Commitment	IATA Global Customer Service Framework & RP 1724	United States	European Union/ECAC	
Offer the lowest fare available	Yes	Yes	Yes	-	-	-
Inform possible availability of lower fares at Web site	-	Yes	Yes*1	Yes	-	-
Honour the agreed fare after payment	-	Yes	Yes*2	-	-	-
Allow reservations to be held or cancelled	Yes	Yes	Yes	-	-	-
Provide prompt ticket refunds	Yes	Yes	Yes	Yes	-	-
Waive ticket restrictions (non-refundable, sequential use of flight coupons) in special circumstances	-	-	Yes*2	-	-	-
Ensure fair advertisements	-	-	-	Yes	Yes	-
Advise passengers regarding an airline's commercial and operational conditions	Yes	Yes	Yes	Yes*3	Yes*8	*14
Ensure good customer service from code-share partners	Yes	Yes	Yes	*4	Yes*9	*14
Take measures to expedite check-in	-	Yes	-	-	-	-
Provide notification of delays, cancellations and diversions	Yes	Yes	Yes	-	-	-
Assist in case of delay including long on-aircraft delays	Yes	Yes	Yes	-	*10	-
Handle passengers denied boarding with fairness and consistency	Yes	Yes	Yes	Yes*5	Yes*10	-
Compensate for flight cancellation	-	-	-	-	*10	-
Deliver baggage on time	Yes	Yes	Yes	-	*11	*14
Support an increase in baggage liability limit	Yes	-	-	Yes*6	*11	*15
Respond to customer complaints	Yes	Yes	Yes*1	-	-	-
Submit data for regular consumer reports	-	-	-	Yes*7	*12	-
Properly accommodate the disabled and special-needs passengers (i.e. people with reduced mobility)	Yes	Yes	Yes	Yes	*13	-

*1: Global Customer Service Framework only

*2: RP 1724 only

*3: Disclosure of change of gauge service (14 CFR 258); Disclosure of cancellation policy (contracts of carriage as required by 14 CFR 253.5)

*4: Code-share Safety Program Guidelines

*5: In the process of reviewing the current airline oversales rules

*6: DOT increased the domestic baggage liability limit from \$1,250 to \$2,500 effective January 2000 (14 CFR 254)

*7: DOT reports flight delays, mishandled baggage, oversales and consumer complaints. DOT proposed also to collect disability-related complaints from carriers

*8: CRS code of conduct (EC Regulation 2299/89 as amended by 3089/93 and 323/99) contains related provisions

*9: CRS code of conduct (ditto) contains related provisions; ECAC Recommendation on Consumer Information Protection Needs (1996)

*10: The Commission proposed to amend the current EC Regulation 295/91 to reinforce protection against denied boarding and to cover cancellation and long delay

*11: In the process of amending EC Regulation 2027/97 to include a provision on liability for baggage

*12: In the process of legislation

*13: The ECAC Policy Statement in the Field of Civil Aviation Facilitation, section 5

*14: Warsaw Convention as amended at the Hague 1955 and by Protocol No.4 of Montreal 1975

*15: Montreal Additional Protocol No.2 1975; Montreal Additional Protocol No.1 1975; Warsaw Convention as amended at the Hague 1955 and by Protocol No.4 of Montreal 1975

APPENDIX B

CONDITIONS OF CONTRACT/CARRIAGE

“Conditions of contract” mean the terms and conditions shown on the travel documents. “Conditions of carriage” mean the terms and conditions established by an air carrier in respect of its carriage, and are filed as applicable tariff rules. Both conditions of carriage/contract spell out the various benefits and limitations associated with the air transportation being provided. These benefits and limitations, along with the price, constitute a “contract for carriage” between the air carrier and the user.

To harmonize the conditions under which passengers travel on inter-carrier journeys, airlines developed, through IATA, Resolution 724 on *Passenger Ticket - Notices and Conditions of Contract* and Recommended Practice 1724 on *General Conditions of Carriage (Passenger and Baggage)*. Resolution 724 binds member airlines, which apply it to international flights. The Notices cover limitations of liability, overbooking, information on taxes and user fees, and some national requirements, while the Conditions of Contract include certain articles and incorporate by reference the provisions of the ticket itself, the carrier’s tariffs and its general conditions of carriage. On the other hand, RP 1724 does not bind member airlines. The 2000 version of RP 1724 consists of the following elements:

1. What Particular Expressions Mean in These Conditions
2. Applicability
general; charter operations; code shares; overriding law; conditions prevail over regulations
3. Tickets
general provisions; period of validity; coupon sequence and use; name and address of carrier
4. Fares, Taxes, Fees and Charges
fares; taxes, fees and charges; currency
5. Reservations
reservation requirements; ticketing time limits; personal data; seating; reconfirmation of reservations;
cancellation of onward reservations
6. Check-in and Boarding
7. Refusal and Limitation of Carriage
right to refuse carriage; special assistance
8. Baggage
free baggage allowance; excess baggage; items unacceptable as baggage; right to refuse carriage;
right of search; checked baggage; unchecked baggage; collection and delivery of checked baggage;
animals
9. Schedules, Delays, Cancellation of Flights
schedules; cancellation, rerouting, delays. etc.
10. Refunds
involuntary refunds; voluntary refunds; refund on lost ticket; right to refuse refund; currency;
by whom ticket refundable
11. Conduct Aboard Aircraft
general; electronic devices
12. Arrangements for Additional Services
13. Administrative Formalities
general; travel documents; refusal of entry; passenger responsible for fines, detention costs, etc.;
customs inspection; security inspection
14. Successive carriers
15. Liability for Damage
16. Time Limitation on Claims and Actions
Notice of claims; limitation of actions
17. Other Conditions
18. Interpretation

— END —