



WORLDWIDE AIR TRANSPORT CONFERENCE (ATCONF)

SIXTH MEETING

Montréal, 18 to 22 March 2013

Agenda Item 2: Examination of key issues and related regulatory framework

Agenda Item 2.1 : Market access

LIBERALIZATION OF CODE SHARE FRAMEWORKS: AUSTRALIA'S EXPERIENCE

(Presented by Australia)

1. INTRODUCTION

1.1 In recent years airlines around the world have been increasingly utilising the practice of code sharing to expand their networks. This growth has been driven by the expansion of cooperative business practices, both within the structures of the three global alliances and on a bilateral code share basis. Thus, the ability for airlines to code share with other airlines is an increasingly important element of airline operations, and delivers commercial flexibility for airlines to develop new markets on a cost-effective basis. Code sharing as marketing carriers allows airlines to significantly increase their network coverage in markets where own-aircraft operated services are not commercially feasible. An expansion of code share services also offers States the benefit of increased global connectivity, facilitating tourism and trade links.

1.2 In the Australian market, the use of code sharing is widespread. Major Australian airlines, such as Qantas Airways and Virgin Australia Airlines, have extensive code sharing networks that extend the reach of their services beyond the limits of their own-operated networks to markets too small to be served with dedicated own-operated services from Australia. Similarly, many non-Australian international airlines utilise code share arrangements for their services to and from Australia. For example, foreign airlines such as Air France, Kenya Airways, Lufthansa, US Airways, Air Austral, Air Berlin, Air Tahiti Nui, S7, and Jet Airways serve Australia only through code share services as marketing carriers on flights operated by partner airlines. Other foreign airlines use code sharing to expand the scope of their Australasian network, code sharing on domestic services within Australia, or on services within the South West Pacific, to connect traffic to and from their Australian services.

1.3 If passenger traffic between countries is too thin to justify own-aircraft operated services, the airlines of the countries concerned may wish to serve the market though code share as a marketing carrier on flights operated by airlines of third countries on the routes (or route-segments) between the countries. This permits airlines to begin development of the market, stimulating growth which may then eventually lead to own aircraft services.

2. CURRENT INTERNATIONAL REGULATORY FRAMEWORK FOR CODE SHARE SERVICES

2.1 As a general rule, within the bilateral system, before airlines can provide services on a code share basis, such co-operation needs to be permitted by the air services agreements applying between airlines' respective countries. Code share provisions are usually included in an air services agreement and/or supplementary understandings (such as Memorandum of Understanding, or exchange of correspondence) that operate in parallel with the legal authority of the air services agreement.

2.2 Thus, if an airline or airlines wish to provide code share services between two countries that do not have an air services agreement in place, it has been common practice for those countries to negotiate an air services agreement. This can be a time and resource consuming process.

2.3 States' approaches to code share operations also vary. While many countries, including Australia, see code share as a useful and effective tool for airlines to grow their services, many States view code share as a supplementary activity that should not be permitted unless airlines are flying their own aircraft (or at least have the regulatory ability to operate their own aircraft), or at times even as a 'deceptive' activity that 'prevents' airlines flying their own aircraft.

3. AUSTRALIA'S APPROACH TO CODE SHARE OPERATIONS

3.1 In general, in most air services negotiations, Australia seeks to include a framework for code sharing that is as open as possible, with no restrictions on the capacity, route or traffic rights that may be exercised by marketing carriers (as distinct from operating carriers), and with carriers able to code share on airlines of the same country, the other country and third countries without restriction, provided only that the operating carrier has the rights required to fly the route in question.

3.2 In Australia, code share operations by marketing carriers are subject to a simplified approval process under domestic law. Airlines proposing to provide code share services as marketing carriers are not required to obtain aviation safety and security approvals normally sought from airlines proposing own-aircraft operated services, and these approvals remain the responsibility of the operating carrier. Marketing carriers are subject to economic regulatory approval requirements, including an International Airline Licence and timetable approvals, however the requirements for these licences and approvals are simplified for code share services.

4. GROWING DEMAND FOR CODE SHARE AND A SIMPLIFIED REGULATORY RESPONSE

4.1 In recent years, Australia has seen a growing interest from both Australian and foreign international airlines to market code shared services between Australia and other countries on flights currently operated by third country airlines, beyond the reach of their own-aircraft services. This has included Australian airlines seeking to expand the reach of their networks, and foreign airlines seeking to add Australian destinations to their networks.

4.2 In many of these cases, there was no air services agreement in place to facilitate and govern the provision of these code shared services. In the past, this would have meant that Governments would negotiate such an air services agreement. Negotiation of a full, treaty-level air services agreement is time- and resource-intensive, particularly when States' domestic treaty requirements are considered. Where there is no realistic prospect of own aircraft services, the value of the time and resources required

for a treaty-level framework can and should be questioned, particularly given the resource constraints experienced by many aeronautical authorities around the world.

4.3 In order to simplify the Government-to-Government framework, the Australian aeronautical authorities developed the text of a stand-alone Memorandum of Understanding (MoU) which provides a framework for code share services. The MoU includes all of the provisions required for a clear, predictable and enforceable framework for code share services, with appropriate safeguards not only for consumers, but also in respect of safety and security, but omits other provisions typically included in air services agreements where their inclusion is not required.

4.4 As a less-than-treaty-status instrument, the code share MoU significantly simplifies administrative burdens and streamlines the process of negotiations. In coming years, with the recent and projected growth in international air traffic, the current bilateral system will likely struggle to keep pace with growth in airline activity. It is therefore important that States explore ways to simplify their regulatory approaches to industry tools such as code share, to ensure that growth in the aviation sector is not constrained by Governments. While ICAO initiatives such as ICAN have facilitated more rapid negotiation, many States remain committed to negotiating full air services agreements, even in cases where airlines are not likely to operate services with their own aircraft, adding to States' legal and administrative commitments.

4.5 Over the last two years, Australia has concluded 11 code share MoUs with bilateral partners. In addition, Australia has a number of code share MoUs under negotiation. This has facilitated the commencement of additional code share services to and from Australia. Australia has also concluded air services agreements that include fully open code share with a number of countries.

4.6 The addition of multiple marketing carrier codes to an existing air service does not change the level of capacity offered in the market; rather, it simply changes the distribution method from one airline to another. Thus, even with third country code sharing, States retain control over the capacity and services being provided into and out of their territory. Code sharing simply widens the distribution of those services and supports their viability.

5. CONCLUSIONS

5.1 The Conference is invited to note Australia's positive experience with the growth of code sharing by airlines, and the negotiation of simplified frameworks for the provision of code share services. The Conference is further invited to note the following conclusions that can be drawn from Australia's experience, and consider them in the context of the liberalization of market access and future frameworks:

- a) Code share allows airlines to expand their international networks without deploying their own aircraft, improves viability of existing own-aircraft operated services, discourages the operation of non-viable or marginal own-aircraft services, increases connectivity, and helps to develop new markets;
- b) The negotiation of full air services agreements where services are unlikely to be operated by airlines with their own aircraft adds to the complexity and cost of the international bilateral system;
- c) The slow-moving bilateral system has the potential to constrain airline industry growth if Governments do not keep pace; simplification of regulatory mechanisms will be required for the future; and

- d) Moves by States to examine and simplify their own negotiation and regulatory processes will make the bilateral system more nimble and efficient, and better able to meet the needs of industry.

— END —