



WORKING PAPER

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 2.2: Air carrier ownership and control

EGYPTIAN EXPERIENCE IN THE LIBERALIZATION OF AIR CARRIER OWNERSHIP

(Presented by Egypt)

EXECUTIVE SUMMARY

This paper presents information on Egypt's experience regarding joint air carriers and the impact of regional groupings on the liberalization of air carrier ownership and control.

Action: The Conference is invited to agree to the recommendations presented in paragraph 3

References: ATConf/6 reference material is available at www.icao.int/meetings/atconf6.

1. INTRODUCTION

1.1 Bilateral air services agreements often stipulate that air carriers designated by one of the two contractual parties must be owned and controlled by the designating party or its nationals. Since the Chicago Conference of 1944, a provision has usually been included in the agreements to stipulate that "each Party shall have the right to withhold the authorizations referred to in the relevant Article with respect to an airline designated by the other Party, and to revoke, suspend or impose requirements on such authorization if it is not convinced that it is substantially owned and effectively controlled by the designating party or its nationals".

1.2 The intent of this clause is to guarantee the existence of a strong link between the air carrier and the designating State. This link is usually manifested in the nationality of the air carrier and linked to the ownership of its capital and its effective management, so as to facilitate for the parties concerned to achieve a balance of benefit for the airlines, prevent a non-party State through its carrier from gaining, indirectly, an unreciprocated benefit and to identify those who are responsible for safety and security matters as well as for the defence of national interests of each party.

¹ Arabic version provided by Egypt.

1.3 Accordingly, the justifications for this requirement were obvious when airlines were owned by the States in which they were registered.

1.4 In 1950, despite the importance of the requirement of ownership and effective control and with the emergence of international and joint air carriers, Egypt signed bilateral air services agreements in which it did not state as a requirement that the other party designate an airline that it owns and effectively controls, in keeping with the spirit of Article 77 of the Convention on International Civil Aviation and the Council of ICAO decision related to this Article. Egypt did not include the requirement of substantial ownership and effective control and allowed the designation of international and joint carriers that were not fully affiliated to the other party.

1.5 Egypt concluded bilateral air services agreements with Sweden, Denmark and Norway that contained a provision in the airline designation article known as the “SAS Clause”. According to this clause, each one of these States has the right to select Scandinavian Airlines as the designated airline to exercise the rights and privileges stipulated in the agreement. This clause is reflected either in the body of the agreement itself or in an exchange of letters, which then becomes an integral part of the agreement, between the parties.

1.6 Moreover, Egypt also signed during that period several bilateral air services agreements with Member States of Air Afrique (joint air carrier) which are Senegal, the Republic of the Congo, Cameroon and the Central African Republic, after separate negotiations carried out at different times. This joint carrier was established in 1961 between 12 States in Central and West Africa.

1.7 Egypt also signed in 1964 bilateral air services agreements with the East African Community States of Kenya, Uganda and Tanzania, which had together established East African Airways Corporation. Egypt accepted the designation of this carrier without the requirement of substantive ownership and effective control of a specific State. Such previous examples illustrate that States wishing to conclude bilateral air services agreements with other States that are members of international or joint air carriers would accept not enforcing the requirement of substantive ownership and effective control.

1.8 In 1999, Egypt signed an air transport agreement with Hong Kong based on the principal place of business criterion. Since then, Egypt signed most of its bilateral agreements based on this criterion in order to achieve the various economic benefits for both parties.

1.9 In light of the international economic developments related to civil aviation, Egypt adopted a more flexible approach by accepting airlines that have foreign ownership or are multi- or transnational in character. This was reflected in the signing of 7 agreements with European States, while accepting the “Community Carrier” principle for the European Union States.

1.10 At the African level, Egypt signed the Yamoussoukro Decision to liberalize access to African air transport markets, including its Article 6 on airline designation. According to this Decision, each African State party to the Agreement has the right to designate any “eligible African airline” owned by another African State that is party to the same Agreement. In addition, States have the right to designate a multinational African airline in its relations with another State party. This Article sets 9 conditions for African airlines to be eligible, and they include the following:

- a) the airline must be established in accordance with the applicable regulations in an African state party to the Yamoussoukro Decision;
- b) the airline must have its headquarters and centre of administration in its principal place of business, which must be physically located in one of the designated states;

- c) the airline's aircraft may be owned or leased for at least six months;
- d) the airline must comply with safety and security requirements according to ICAO standards; and
- e) the airline must be effectively controlled by a state party.

2. CONCLUSION

2.1 While the principle of liberalization was largely accepted, legal constraints related to airlines and their effective control in air services agreements did not change to a large extent, reflecting States' reluctance to adopt an approach that would not easily distinguish between the nationalities of foreign carriers, even though they generally seek to liberalize the ownership of air carriers. Egypt believes that the development of a multilateral agreement in this regard with a timeframe to remove the nationality clause, based on what has been achieved by most regional groupings such as Africa and Europe, would help in providing the necessary level of confidence to most States in the world to adopt a liberalization policy vis-à-vis substantive ownership and effective control.

3. RECOMMENDATIONS

3.1 The Conference is invited to:

- a) request ICAO to consider the possibility of developing a flexible draft multilateral agreement by ICAO with a timeframe for the removal of the nationality clause, based on the degree of liberalization that was attained by some regional groupings at the global level such as Africa, the European Union and others;
- b) request ICAO to continue its role in developing policy guidelines concerning air carrier ownership and control; and
- c) request regional organizations to play a role in increasing the awareness of states of the importance of the removal of the nationality clause.

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