



**WORKING PAPER**

**WORLDWIDE AIR TRANSPORT CONFERENCE (ATCONF)**

**SIXTH MEETING**

**Montréal, 18 to 22 March 2013**

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

**Agenda Item 2.1 : Market access**

**LIBERALIZATION OF MARKET ACCESS**

(Presented by the United States of America)

**EXECUTIVE SUMMARY**

Air services agreements that couple increased market access with other open-skies elements, including provisions that eliminate government interference in airlines' commercial decisions on capacity and pricing, and establish pro-competitive elements on user charges, doing-business matters and cooperative arrangements, deliver broad economic benefits to States and aviation stakeholders.

The considerable progress that Member States have achieved in liberalization is evidence that the current system has been very effective in increasing liberalization, and that the momentum should be maintained through the use of open-skies agreements at the bilateral, regional, plurilateral and multilateral levels.

The Multilateral Agreement on Liberalization of International Air Transportation (MALIAT) offers the potential for a broader exchange of market access opportunities and significant progress in liberalization on a multilateral basis.

**Action:** The Conference is invited to:

- a) review the information and assessments presented in this paper;
- b) endorse the conclusions presented in paragraph 4; and
- c) adopt the recommendations presented in paragraph 5.

*References:* ATConf/6 reference material is available at [www.icao.int/meetings/atconf6](http://www.icao.int/meetings/atconf6).

**1. INTRODUCTION**

1.1 Increased access to the international market for air service providers is a key component for allowing the air transport sector to maximize its contribution to the global economy. Liberalization, particularly as it is exemplified in open-skies agreements, brings with it the economic benefits generated by a more competitive market place, promoting increased travel and trade, enhancing productivity and

economic growth.<sup>1</sup> The number of liberalizing agreements that ICAO Member States have concluded bilaterally, regionally and plurilaterally/multilaterally over the past decade demonstrates a clear international consensus on liberalization's benefits. The United States welcome all efforts by ICAO Member States to achieve liberalization of international air transport services.

1.2 When the Fifth Worldwide Air Transport Conference met in 2003 there were 87 liberalized agreements involving 70 countries, 59 of which were U.S. open-skies agreements. As of October 2012 there were over 400 liberalized agreements involving 145 states.<sup>2</sup> Of these, over 100 were U.S. open-skies agreements. In addition, the number of liberalizing regional agreements has expanded since 2003; for example, Association of Southeast Asian Nations (ASEAN) members have concluded an agreement to achieve a single open-sky market by 2015, and other liberal agreements have been concluded by South Pacific Island States, the Caribbean Community and members of the Latin American Civil Aviation Commission (LACAC).

1.3 As noted in WP/13, highly liberal agreements grant largely unrestricted market access in addition to third and fourth freedom rights. It is also crucial to recognize that liberalized agreements maximize benefits to users, airlines, airports and economies only if they also include liberal "doing business" provisions and other elements that enhance competition. U.S. open-skies agreements grant unrestricted 1<sup>st</sup> through 6<sup>th</sup> freedom route rights to airlines of the parties, and often 7<sup>th</sup> freedom all-cargo rights, include provisions that eliminate government interference in airlines' commercial decisions on capacity and pricing, and establish pro-competitive elements on user charges, doing-business matters and cooperative arrangements. The U.S. model open-skies agreement and a list of our open-skies agreements can be found at <http://www.state.gov/e/eb/rls/othr/ata/114805.htm>.

## 2. UNITED STATES – EUROPEAN UNION AGREEMENT

2.1 A path-breaking event was the negotiation and conclusion of the 2007 "1<sup>st</sup> Stage" U.S.-European Union (EU) Air Transport Agreement, which established an open-skies-plus regime between the world's two largest aviation markets, allowing carriers of the parties to fly between any cities in the EU and the United States; operate without restriction on the number of flights, type of aircraft, or routes; set fares according to market demand; and enter into cooperative arrangements, including codesharing, franchising and provision of aircraft with or without crew. By combining acceptance of the EU carrier concept with liberalized traffic rights, the Agreement opened the door to stand-alone service to/from the U.S. by an EU carrier of one member State from a different member State, and to cross-border airline mergers and acquisitions within the EU such as the merger of British Airways and Iberia in International Airlines Group (IAG). In other investment-related changes, it clarified conditions under which U.S. and EU nationals could own up to 49.9 percent of the total equity in each other's airlines, and the U.S. agreed that EU investments in airlines from Switzerland, Liechtenstein, members of the European Common Aviation Area (ECAA), Kenya and U.S. open-skies partners in Africa would not put at risk such airlines' rights to operate to the United States.

2.2 In addition, the Agreement fostered enhanced regulatory cooperation in areas as diverse as competition policy, government subsidies and support, the environment, consumer protection, social dimension, and security. It established a consultative Joint Committee through which the U.S. and the EU can resolve questions and further develop areas of cooperation. It committed the parties to "2<sup>nd</sup> stage" negotiations on further liberalization. A 2<sup>nd</sup> Stage agreement was concluded in 2010, which confirmed the

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<sup>1</sup> As used herein, "open-skies agreement" refers to an agreement that is consistent with the U.S. open-skies model agreement.

<sup>2</sup> See ATConf/6-WP/13.

rights exchanged in the 1<sup>st</sup> stage agreement, expanded U.S.-EU cooperation in a broad spectrum of environmental areas including noise and emissions, provided greater transparency and compliance with the ICAO “balanced approach” to noise management at EU airports, expanded EU carriers’ access to “Fly America” traffic funded by U.S. Government civilian agencies, and recognized the benefits that arise when open aviation markets are accompanied by high labor standards. The 2010 agreement extended the commitment to seek greater liberalization by including a grant of additional traffic rights that would be triggered by future legislative changes in the U.S. and the EU on investment and noise management, respectively. In 2011 the Agreement was extended to include Iceland and Norway.

### 3. MULTILATERAL APPROACHES TO MARKET ACCESS

3.1 WP/13 notes that while there have been calls in some quarters for restraint on opening markets due to a number of factors, outright demands to roll back liberal agreements have been rare, and the industry has advocated more, not less, commercial freedom and liberalization.<sup>3</sup> The question has again been raised whether future expansion of market access can be better achieved by continued reliance on bilateral exchanges of market access, or whether the time has come to renew attempts to establish a multilateral framework. For example, WP/13 proposes that ICAO assume a leadership role in developing a multilateral market access agreement.

3.2 On December 7, 1944, in addition to the Convention and the International Air Services Transit Agreement (IASTA), the International Air Transport Agreement (the “Five Freedoms agreement”) was opened for signature. Under that agreement, States agreed to grant each other, and any future signatories, scheduled route rights incorporating the 1<sup>st</sup> through 4<sup>th</sup> freedoms of the air; granting and receiving 5<sup>th</sup> freedom rights was optional. It did not specifically address frequencies or pricing. Very few countries were willing to grant what appeared at the time to be relatively unfettered market access, for a variety of reasons. Prominent among them were the fear that U.S. carriers, virtually the only ones expected to be viable in the immediate aftermath of the World War II, would dominate the international market, and a fundamental desire to control market access coupled with an unwillingness to offer it to any and all on an a most-favoured nation (MFN) basis. Since the agreement attracted only a few parties, market access devolved to a network of bilateral agreements negotiated individually, with tight restrictions on routes, capacity and pricing. Notwithstanding the gradual erosion of bilateral restrictions and the accelerating liberalization of market access over the past three decades, the bilateral system has been widely criticized for perpetuating limitations and acting as a barrier to a wider exchange of rights due to its cumbersome nature.

3.3 A broad multilateral exchange of market opportunities has remained an ambitious vision, and several attempts have been made to overcome the limitations of the bilateral system: (1) inclusion of air services in the Global Agreement on Trade in Services (GATS), (2) liberalized regional and sub-regional agreements, and (3) broader plurilateral agreements such as the Multilateral Agreement on Liberalization of International Air Transportation (MALIAT). These efforts have generally yielded at best mixed results. Inclusion of traffic rights and services directly related to their exercise in GATS has been unacceptable because States remain reluctant to grant rights on an MFN basis, without any assurance that they will receive comparable rights. With the notable exception of the EU, regional agreements have had mixed success to date due to insufficient liberalization and/or implementation difficulties. Accession to MALIAT has been disappointing. Since its 2001 signature by Brunei, Chile, New Zealand, Singapore and

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<sup>3</sup> In 2008, IATA launched an “Agenda for Freedom” initiative, aimed at facilitating regulatory liberalization. This initiative led to the signing in 2009 by seven governments of a “Declaration of Policy Principles”, which included *inter alia* a political commitment to full market access liberalization.

the U.S., the MALIAT has been joined by Peru (which later withdrew), Samoa, Tonga, Mongolia (cargo only) and Cook Islands.<sup>4</sup>

3.4 Nevertheless, the MALIAT, if more widely accepted, would provide all the benefits of a new multilateral instrument. MALIAT, in addition to incorporating the full open-skies model of unrestricted route access including all-cargo 7<sup>th</sup> freedoms, capacity and pricing freedom, and pro-competitive doing-business and airline cooperative provisions, provides a straightforward framework that allows all parties to enjoy full open-skies treatment from all other parties, as well as an option for enhanced access to capital investment, and for the accession of new parties without the need for a series of time-consuming bilateral negotiations. It was later amended to permit accession on a cargo-only basis.

3.5 In order to advance liberalization and broaden economic benefits, a multilateral air services agreement would have to include the full set of open-skies elements. As noted in WP/13, such an undertaking would require substantial incremental work and allocation of resources, not only by ICAO but also by interested States. Development of such an instrument, including one along the lines set forth in WP/13, would essentially re-create the MALIAT. A fuller understanding of the reasons for the lack of broader adherence to MALIAT would provide indispensable insights into the prospects for widespread acceptance of a multilateral open-skies air services agreement.

3.6 Before embarking on an enterprise to create a new multilateral air services agreement, which would require a substantial commitment of resources, prudence demands an evaluation of the likelihood of success, both in completing an acceptable instrument and in attracting initial and future adherents. If the Conference recommends proceeding, the United States strongly believe that before the Council makes a decision to initiate such a project, ICAO should conduct a detailed survey, circulating the MALIAT and requesting States to respond by explaining the basis for their decisions to accede, or not to accede.

## 4. CONCLUSIONS

4.1 Liberalization provides broad and deep economic benefits for States' consumers, airlines, airports, communities and economies. Increased access to the international market for air service providers is a key component for allowing the air transport sector to maximize its contribution to the global economy.

4.2 Air services agreements that couple increased market access (in addition to 3<sup>rd</sup> and 4<sup>th</sup> freedom) with the full set of other open-skies elements, including provisions that eliminate government interference in airlines' commercial decisions on capacity and pricing and establish pro-competitive elements on user charges, doing-business matters and cooperative arrangements, deliver broad economic benefits to States and aviation stakeholders.

4.3 The considerable progress that Member States have achieved in liberalization is evidence that the current system has been very effective in increasing liberalization, and that the momentum should be maintained through the use of open-skies agreements at the bilateral, regional, plurilateral and multilateral levels.

4.4 The Multilateral Agreement on Liberalization of International Air Transportation (MALIAT) offers the potential for a broader exchange of market access opportunities and significant progress in liberalization on a multilateral basis, but has attracted limited accession.

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<sup>4</sup> See <http://www.maliat.govt.nz/>

5. **RECOMMENDATIONS**

5.1 The following recommendations are proposed for adoption by the Conference:

- a) that States that have not yet entered into open-skies agreements should do so at the earliest practicable opportunity with as many partners as possible;
- b) that when negotiating liberalized market access agreements, States should actively consult with aviation stakeholders, including labor, airlines, airports and communities; and
- c) that ICAO should conduct a survey circulating the MALIAT and requesting States to respond by explaining the basis for their decisions to accede, or not to accede, and their willingness to accede to MALIAT or a similar instrument in the future.

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