



## AIR TRANSPORT REGULATION PANEL (ATRP)

### THIRTEENTH MEETING

Montréal, 1 to 4 September 2015

## COMPETITION PROVISIONS OF EXISTING AIR SERVICES AGREEMENTS IN GLOBAL OR REGIONAL FRAMEWORKS

(Presented by the Secretariat)

### INTRODUCTION

1.1 This paper provides examples of competition provisions found in existing air services agreements and arrangements, and in global or regional frameworks.

1.2 Note that as provided in ATRP/13-IP/1, the ICAO bilateral and regional/plurilateral Template Air Services Agreement (TASA) also includes an Article on fair competition, which offers wordings for three types of approaches: traditional, transitional and full liberalization (see IP/1 paragraph 6 and Appendix F).

1.3 In the spirit of the Convention on International Civil Aviation (Chicago Convention) signed in 1944 to determine the future of air transport, States sought to form an industry that “operated soundly and economically,” one where all parties promote the principles of fairness and cooperation, acting “on the basis of equality of opportunity.” In holding with this conclusion, States have to date brokered thousands of bilateral and multilateral agreements, which have collectively furthered the prospects for the continued development of civil aviation.

1.4 The ICAO World Air Services Agreements (WASA) on-line database is continuously updated and currently it includes 2660 Agreements and Arrangements from 173 States, as well as over

	Agreements	%	
<b>Total</b>	2660		1000 Amendments. Of the Agreements and Amendments, 844 have a competition clauses referring to airlines having the right to fair and equal opportunities to <b>operate</b> air services, 202 state that air carriers possess the right to fair and equal opportunities to <b>compete</b> in providing air services, and 191 of these accords contain an additional reference regarding <b>unfair competition practices</b> . These numbers will continue to increase as new Agreements, Arrangements, and Amendments are signed.
<b>Full Liberal</b>	147	6%	
<b>Transitional</b>	320	12%	
<b>Traditional</b>	2190	82%	

1.5 The WASA database also contains more qualitative information as to how liberal or prescriptive each agreement, including all amendments, is, labelling each accord as either “full liberalization,” “transitional,” or “traditional.” Currently, there are 147 full liberalization agreements (with an additional 55 amendments), 320 transitional agreements (with 178 attached amendments), and 2190 traditional agreements (with 767 amendments). Of the full liberalization agreements and amendments that have not since been superseded by liberal regional or multilateral accords, since only two were signed prior to 1995.

1.6 The different Competition Clauses are presented as Appendices A to D as follows::

- **Appendix A - Bilateral Air Services Agreements**
- **Appendix B - Regional and Multilateral Agreements or Arrangements**
- **Appendix C - European Union Agreements**
- **Appendix D - Other Agreements/Arrangements**

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## APPENDIX A:

### BILATERAL AGREEMENTS

1.1 Given below are the competition clauses that are included in exemplary bilateral agreements or arrangements<sup>1</sup>. They are sorted from more prescriptive to more liberal in their treatment of competition and capacity.

1.2 The first three agreements are typical bilateral accords with predetermined routes, capacities, and/or frequencies. While more liberal agreements have become more common, the a substantial majority of existing accords are of the format below. Note the line “fair and equal opportunity...to operate” air services, and compare it to the language of more liberal agreements, which typically replace the line with “fair and equal opportunity...to compete,” or otherwise emphasize competition and market forces. Last, these traditional, prescriptive agreements continue to be signed in large numbers: the second agreement was concluded in April 2011, and the third in September 2013 .

#### 1.3 **Air Service Agreement: Belgium – United Arab Emirates, March 1990**

##### 1.3.1 Article 8: Principles governing operation of agreed services:

1. *There shall be fair and equal opportunity for the designated airlines of each Contracting Party to **operate** the agreed services on the specified routes between and beyond their respective territories.*
2. *In operating the agreed services, the designated airlines of each Contracting Party shall take into account the interests of the designated airlines of the other Contracting Party so as not to affect unduly the services, which the latter provide on the whole or part of the same routes*
3. *The agreed services provided by the designated airlines of the Contracting Parties shall bear close relationship to the requirements of the public for transportation on the specified routes and shall have as their primary objective the provision, at a reasonable load factor, of capacity adequate to carry the current and reasonably anticipated requirements for the carriage of passengers and cargo including mail originating from or destined for the territory of the Contracting Party which has designated the airline(s). Provision for the carriage of passengers and cargo including mail both taken on board and discharged at points on the specified routes in the territories of States other than that designating the airline(s) shall be made in accordance with the general principles that capacity shall be related to:*
  - a) *traffic requirements to and from the territory of the Contracting Party which has designated the airline(s);*
  - b) *traffic requirements of the area through which the agreed service passes, after taking account of other transport services established by airlines of the States comprising the area; and*

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<sup>1</sup> The main source for the following agreements and extracted clauses is ICAO’s World Air Services Agreements on-line database (WASA). Comprising over 3600 agreements, arrangements and amendments, it includes the texts and codified summaries of the main provisions of these documents. Additionally, it contains both agreements registered with ICAO by its member States and non-registered agreements obtained from other sources, such as websites of national authorities

c) *the requirements of through airline operation.*

1.4 **Air Service Air Agreement: China – Cameroon, April 2011**

1.4.1 Article 10: Principles governing operation of agreed services:

1. *The total capacity to be provided on the agreed services by the designated airlines of the Contracting Parties shall be agreed between the aeronautical authorities of the Contracting Parties before the commencement of the operations, and thereafter according to anticipated traffic requirements.*
2. *There shall be fair and equal opportunity for the designated airlines of each Contracting Party to **operate** the agreed services on the specified routes between their respective territories and beyond.*
3. *In operating the agreed services, the designated airlines of each Contracting Party shall take into account the interests of the designated airlines of the other Contracting Party so as not to affect unduly the services which the latter provided on the whole or part of the same routes.*
4. *Provision for the carriage of passengers and cargo including mail both taken on board and discharged at points on the specified routes in the territories of States other than that designating the airlines shall be made in accordance with the general principles that capacity shall be related to:*
  - a) *traffic requirements to and from the territory of the Contracting Party which has designated the airline;*
  - b) *traffic requirements of the area through which the agreed service passes, after taking account of other transport services established by airlines of the States comprising the area; and*
  - c) *the requirements of through airline operation.*

1.5 **Air Service Agreement: Kuwait –Malta, September 2013**

1.5.1 Article 13: Capacity Provisions:

- 1) *There shall be fair and equal opportunity for the designated airlines of both Contracting Parties to **operate** air services on any route specified in the accordance with paragraph 1 of Article 2 (Granting of Rights and Privileges) of this Agreement between their respective territories.*
- 2) *The agreed air services provided by a designated airline(s) shall **retain as their primary objective the provisions of capacity adequate to current and reasonably anticipated requirements** for the carriage of passengers, mail and cargo, originating from or destined for the territory of the Contracting Party designating the airline. The right of the designated airline of either Contracting Party to embark or disembark at the point in the territory of the other*

*Contracting Party international traffic destined for or coming from third countries shall be in accordance with the principles that such traffic will be of a supplementary character and capacity shall be related to:*

- a) traffic demands between the territory of the Contracting Party designating the airline and the points on the specified routes;*
- b) traffic requirements of the areas through which the airline passes for the economic operation of the route;*
- c) the requirements of through airline operation.*

1.6 Bilateral Air Services Agreements exist along a scale of attitudes toward competition, ranging from the very prescriptive to the entirely market-driven. The middle is occupied by transitional accords that borrow aspects from each side. In some cases, the body of the agreement may have limitations on capacities or frequencies, but not on city-pairs, or vice-versa. The following agreement possesses a different formulation, as it uses liberal language in the body of the accord – note the presence of “compete” and “commercial considerations of marketplace” – while the Annex contradicts this wording by imposing restrictions on routes, frequencies, and fifth freedom rights.

## 1.7 **Air Services Agreement: United Republic of Tanzania – Rwanda, September 2009**

### 1.7.1 Article 3: Exercise of Rights:

- 1) The designated airline shall enjoy fair and equal opportunities to **compete** in providing the agreed services covered by the present Agreement.*
- 2) Neither Contracting Party shall restrict the right of their designated airlines to carry international traffic between their territories*
- 3) Each Contracting Party shall allow the designated airlines to determine the frequency and capacity of the international schedule air services it offers based upon commercial considerations in the marketplace. Consistent with this right, neither Contracting Party shall unilaterally limit the volume of traffic, frequency, number of destinations or regularity of service, or the aircraft type or types operated by the designated airlines or practicing unfair competition against the other Contracting Party, except as may be required for customs, technical, operational, or environmental reasons under uniform conditions consistent with Article 15 of the Convention.*

### 1.7.2 Annex I

#### **Section 1 Route Schedule**

*For the designated airline(s) of the United Republic of Tanzania*

*Route I: Points in Tanzania/Kigali/any beyond points in Africa or elsewhere and vice versa*

*For the designated airline(s) of the Republic of Rwanda*

*Route I: Points in Rwanda/intermediate points/points in Tanzania/Kilimanjaro and or Zanzibar, Mwanza and Kigoma*

*Note: Any point on the above routes may, at the option of the airline concerned, be omitted on any or all flights provided that any service either begins or terminates in the territory of the country designating the airline.*

#### **Section II: Frequency**

*The Designated Airlines of both Contracting Parties may operate up to 14 frequencies per week on the above specified routes.*

**Section III: Capacity**

*With regard to capacity, designated airlines of both contracting parties can operate using any type of aircraft*

**Section IV: Traffic Rights**

*Air service operations shall be conducted with third and fourth freedom traffic rights; the fifth freedom traffic rights may be exercised only on Sectors where there is no designated airline of the Contracting Party*

1.8 The Canadian government has sought to balance air transport liberalization with some amount of protection for domestic interests, particularly where the operations of the country's airlines are "severely limited by discriminatory airport access and/or facilitation issues," the "doing business environment...presents major obstacles," the foreign airline is protected from market forces, resulting in "a markedly unbalanced playing field vis-à-vis Canadian airlines," or "the foreign carrier would be reasonably expected to offer a level of service to such an extent that competition in some markets/routes would be significantly reduced or effectively eliminated – resulting in a net loss for Canada"<sup>2</sup>. The two agreements below reflect these transitional characteristics; note that both Switzerland and China have signed substantially more liberal arrangements with other states during the same timeframe.

1.9 **Air Service Agreement: Canada—China, September 2005**

1.9.1 Article 10: Capacity

1. *There shall be fair and equal opportunity for the designated airlines of both Contracting Parties to **operate** the agreed services on the specified routes.*

2. *In operating the agreed services, the designated airlines of each Contracting Party shall take into account the interest of the designated airline or airlines of the other Contracting Party so as **not to affect unduly the services** which the latter provide on the whole or part of the same routes.*

3. *The agreed services provided by the designated airlines of the Contracting Parties shall bear reasonable relationship to the requirements of the public for transportation on the specified routes and shall have as their primary objective the provision, at a reasonable load factor, of capacity adequate to meet the current and reasonably anticipated requirements for the carriage of passengers and cargo, including mail, between the territory of the Contracting Party which has designated the airline and the countries of ultimate destination of the traffic.*

4. *Provision for the carriage of passengers and cargo, including mail, both taken up and discharged at points on the specified routes in the territories of States other than that designating the airline shall be made in accordance with the general principle that capacity shall be related to:*

*(a) traffic requirements to and from the territory of the Contracting Party which has designated the airline;*

*(b) traffic requirements of the area through which the agreed services pass after taking account of other transport services established by airlines of the States comprising the area; and*

*(c) the requirements of through airline operation.*

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<sup>2</sup> <https://www.tc.gc.ca/eng/policy/ace-blueskypolicy-menu-749.htm>

5. *Capacity to be provided on the agreed services in excess of the entitlements set out in this Agreement may from time to time be agreed between both Contracting Parties or their aeronautical authorities, subject to the approval (expressly or tacitly) of the aeronautical authorities of both Contracting Parties.*

6. *Increases to capacity established in accordance with the provisions of paragraph 5 of this Article shall not constitute a change in capacity entitlements. **Any change to capacity entitlements shall be agreed between the Contracting Parties or their aeronautical authorities.***

1.10 **Amendment to Air Services Agreement: Canada – Switzerland, June 2005**

1.10.1 *Article 5 of the Agreement is superseded in its entirety and the following is substituted therefor:*

1.10.2 Article 5: Capacity

1. *The designated airlines shall enjoy fair and equal opportunities to **operate** the agreed services between the territories of the Contracting Parties.*

2. *The designated airline of each Contracting Party shall take into consideration the interests of the designated airline of the other Contracting Party so **as not to affect unduly** the agreed services of the latter airline.*

3. *The main objective of the agreed services shall be to provide capacity corresponding to traffic demands between the territory of the Contracting Party which has designated the airline and the points served on the specified routes.*

4. *The right of each of the designated airlines to carry international traffic between the territory of the other Contracting Party and the territories of third countries, shall be exercised in conformity with the general principles of normal development to which both Contracting Parties subscribe and subject to the condition that the capacity shall be adapted:*

*(a) to traffic demands from and to the territory of the Contracting Party which has designated the airline;*

*(b) to traffic demands of the areas through which the services passes, local and regional services being taken into account;*

*(c) to the requirements of through airline operations.*

5. *Except as otherwise specified, neither Contracting Party may unilaterally impose any restrictions on the designated airline of the other Contracting Party with respect to capacity, frequency or type of aircraft employed in connection with services over any of the routes specified in the Annex attached to this Agreement. In the event that one of the Contracting Party believes that the operation proposed or conducted by the designated airline of the other Contracting Party unduly affects the agreed services provided by its designated airline, it may request consultations pursuant to Article XIV of this Agreement.*

1.10.3 The remaining agreements in this section are liberal in nature. The first is China's sole fully liberal agreement, signed with Chile, a major proponent of free market arrangements and home to a very open domestic air transport sector. The other agreements are examples from various regions; despite the geographic distance between them, the texts are nearly identical.

1.11 **Air Service Air Agreement: China – Chile, April 2009**

1.11.1 Article 11: Competition among Airlines:

1.11.2 Each Contracting Party shall allow a fair and equal opportunity for the designated airlines of both Contracting Parties to **compete** in providing the international air transportation governed by this Agreement.

1.12 **Air Service Air Agreement: United Arab Emirates – Paraguay, November 2011**

1.12.1 Article 5: Principles Governing Operation of Agreed Service

*Each Contracting Party shall reciprocally allow the Designated Airlines of both Contracting Parties to **compete** freely in providing the international air transportation governed by this Agreement.*

*Each Contracting Party shall take all appropriate action within its jurisdiction to eliminate all forms of discrimination and anti-competitive or predatory practices in the exercise of the rights and entitlements set out in the Agreement.*

1.13 **Air Service Agreement: Kuwait—Singapore, January 2014**

1.13.1 Article 11: Capacity and Fair Competition

- 1) *There shall be fair and equal opportunity for the designated airlines of both Contracting Parties to compete in operating the agreed services on the specified routes*
- 2) *Each Contracting Party shall **allow each designated airline to determine the frequency and capacity of the international air transport it offers**. Consistent with this right, neither Contracting Party shall unilaterally limit the volume of traffic, frequency or regularity of service, or the aircraft type or types operated by the designated airlines of the other Contracting Party except as may be required for customs, technical, operational, or environmental reasons under uniform conditions consistent with Article 15 of the [Chicago] Convention.*

1.14 **Air Services Agreement: United Arab Emirates – Afghanistan, September 2013**

1.14.1 Article 5- Principles governing operation of agreed services:

- 1) *Each Contracting Party shall reciprocally allow the Designated Airlines of both Contracting Parties to compete freely in providing the international air transportation governed by this Agreement*
- 2) *Each Contracting Party shall take all appropriate action within its jurisdiction to eliminate all forms of discrimination and anti-competitive or predatory practices in the exercise of the rights and entitlements set out in this Agreement*
- 3) *There shall be no restriction on the capacity and the number of frequencies and/or type(s) of aircraft to be operated by the Designated Airlines of both*



*Contracting Parties in any type of service (passenger, cargo, separately or in combination). Each Designated Airline is permitted to determine the frequency and capacity it offers on the Agreed Services.*

- 4) *Neither Contracting Party shall unilaterally limit the volume of traffic, frequencies, regularity of service or the aircraft type(s) operated by the Designated Airlines of the other Contracting Party, except as may be required for customs, technical, operational or environmental requirements under uniform conditions consistent with Article 15 of the Convention.*
- 5) *Neither Contracting Party shall impose on the Designated Airlines of the other Contracting Party, a first refusal requirement uplift ratio, no objection fee or any other requirement with respect to capacity, frequencies or traffic which would be inconsistent with the purposes of this Agreement.*

1.14.2 The United States has played a major role in the expansion of liberal agreements through its signing of over 100 Open Skies accords. While each agreement tends to vary slightly, the vast majority hew closely to the model text, reproduced below.

#### 1.15 **US Model Open Skies Agreement Text – last updated: January 2012**

##### 1.15.1 Article 11: Fair Competition

- 1) *Each Party shall allow a fair and equal opportunity for the airlines of both Parties to compete in providing the international air transportation governed by this Agreement.*
- 2) *Each Party shall allow each airline to determine the frequency and capacity of the international air transportation it offers based upon commercial considerations in the marketplace. Consistent with this right, neither Party shall unilaterally limit the volume of traffic, frequency, or regularity of service, or the aircraft type or types operated by the airlines of the other Party, except as may be required for customs, technical, operational, or environmental reasons under uniform conditions consistent with Article 15 of the Convention.*
- 3) *Neither Party shall impose on the other Party's airlines a first-refusal requirement, uplift ratio, no-objection fee, or any other requirement with respect to capacity, frequency, or traffic that would be inconsistent with the purposes of this Agreement.*
- 4) *Neither Party shall require the filing of schedules, programs for charter flights, or operational plans by airlines of the other Party for approval, except as may be required on a non-discriminatory basis to enforce the uniform conditions foreseen by paragraph 2 of this Article or as may be specifically authorized in this Agreement. If a Party requires filings for information purposes, it shall minimize the administrative burdens of filing requirements and procedures on air transportation intermediaries and on airlines of the other Party.*

1.15.2 Some air transport agreements discuss the roles and responsibilities of the respective Parties' domestic competition authorities, either in a standalone article or in a subsection. The two Australian accords below illustrate slightly different models, both existing in the broader framework of a liberal arrangement.

1.16 **Air Transport Agreement: Australia-USA, March 2008**

1.16.1 Article 13 – Competition

- 1) *The Parties recognize that competition among airlines in the U.S.-Australia market is important to promote the objectives of this Agreement, and confirm that they apply their respective competition regimes to protect and enhance overall competition and not to benefit individual competitors.*
- 2) *The Parties recognize that cooperation between their respective competition authorities serves to promote competition in markets and has the potential to promote compatible regulatory results. The Parties agreed that their respective aviation authorities should continue to cooperate on competition matters, taking into account the different responsibilities, competencies and procedures of the authorities.*

1.17 **Air Services Agreement: Australia – New Zealand, August 2002**

1.17.1 Article 14: Competition

- 1) *The competition laws of each Party, as amended from time to time, shall apply to the operation of the airlines of both Parties. Where permitted under those laws, a Party or its competition authority may, however, unilaterally exempt commercial agreements between airlines (including block-space, code-share and other joint service agreements) from the application of its domestic competition law. This does not obligate a Party or its competition authority to provide a reciprocal exemption.*
- 2) *Without limiting the application of competition and consumer law by either Party, if the aeronautical authorities of either Party consider that the airlines of either Party are being subjected to discrimination or unfair practices in the territory of either Party, they may give notice to this effect to the aeronautical authorities of the other Party. Consultations between the aeronautical authorities shall be entered into as soon as possible after notice is given unless the first Party is satisfied that the matter has been resolved in the meantime.*
- 3) *In undertaking the consultations outlined in this Article the Parties shall:*
  - a. *coordinate their actions with the relevant authorities;*
  - b. *consider alternative means which might also achieve the objectives of action consistent with general competition and consumer law; and*
  - c. *take into account the views of the other Party and the other Party's obligations under other international agreements.*

- 4) *Notwithstanding anything in paragraphs 1 to 3 above this Article does not preclude unilateral action by the airlines or the competition authorities of either Party. authorities*

1.17.2 Several international organizations have drafted model bilateral protocols to liberalize various aspects of air services agreements. The OECD has created such an agreement for air cargo services, with a particular focus on traffic rights, commercial presence, operational flexibility, leasing, ground handling, and facilitation. Although the model text is only concerned with air freight, the OECD notes that “similar competition rules should apply to air cargo and passenger services.”

## 1.18 **OECD Bilateral Protocol**

### 1.18.1 Article 7. Fair Competition

1. *Each Contracting Party shall allow a fair and equal opportunity for the designated air carriers of the other Contracting Party to compete in providing the international air cargo transportation governed by this Agreement.*

2. *Each Contracting Party shall allow the designated air carrier(s) of the other Contracting Party to determine the frequency, type of aircraft, configuration and capacity to be used in conducting international air cargo transportation pursuant to this Agreement based upon commercial considerations in the marketplace. Consistent with this right, neither Contracting Party shall act to limit the volume of traffic, frequency or regularity of service, or the aircraft type or types operated by the designated air carriers of the other Party, except as may be required for customs, technical, operational, or environmental reasons under uniform conditions consistent with Article 15 of the Convention. The Contracting Party wishing to apply such conditions must provide, as soon as possible, appropriate evidence to the other Contracting Party of the need for such conditions, so as to allow for any consultations pursuant to Article [...] prior to the date of effectiveness of such conditions.*

3. *Neither Contracting Party shall impose, or permit any person or body under its jurisdiction to impose, on a designated air carrier of the other Contracting Party any requirement or condition, including a first refusal requirement, uplift ratio, or no-objection fee or any other requirement with respect to capacity, frequency or traffic, which is inconsistent with the purposes of this Agreement.*

4. *Neither Contracting Party shall require the filing of schedules, programs for charter flights, or operational plans by the designated air carriers of the other Contracting Party for approval, except as may be required on a non-discriminatory basis to enforce the uniform conditions foreseen by paragraph 2 of this Article.*

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**APPENDIX B –**

**REGIONAL AND MULTILATERAL AGREEMENTS OR ARRANGEMENTS**

1.1 Given below are the competition clauses that are included in exemplary regional, plurilateral and multilateral agreements or arrangements.

1.2 The predecessor of modern multilateral aviation agreements is the International Air Transport Agreement, opened for signing on December 7, 1944 along with the Convention on International Civil Aviation (Chicago Convention). The Transport Agreement is notable for its relative lack of prescriptive policies, a rarity for the time, and its provision of 5th freedom rights, which gives rise to its alternate name, the Five Freedoms Agreement. Relatively few States chose to sign the accord, largely due to perceptions that the agreement was overly liberal and failed to protect the carriers of states with nascent or conflict-damaged air transport sectors. The sections relating to competition and capacity are reproduced below; note how the third article contains general principles on fifth freedom operations:

1.3 **International Air Transport Agreement (5 Freedoms Agreement), December 1944**

1.3.1 Article I

Section 1

*Each contracting State grants to the other contracting States the following freedoms of the air in respect of scheduled international air services:*

- 1. The privilege to fly across its territory without landing;*
- 2. The privilege to land for non-traffic purposes;*
- 3. The privilege to put down passengers, mail and cargo taken on in the territory of the State whose nationality the aircraft possesses;*
- 4. The privilege to take on passengers, mail and cargo destined for the territory of the State whose nationality the aircraft possesses;*
- 5. The privilege to take on passengers, mail and cargo destined for the territory of any other contracting State and the privilege to put down passengers, mail and cargo coming from any such territory.*

*With respect to the privileges specified under paragraphs 3, 4 and 5 of this section, the undertaking of each contracting State relates only to through services on a route constituting a reasonably direct line out from and back to the homeland of the State whose nationality the aircraft possesses.*

1.3.2 Article III

*Each contracting State undertakes that in the establishment and operation of through services due consideration shall be given to the interests of the other contracting States so as not to interfere unduly with their regional services or to hamper the development of their through services*

1.4 **Decision on Integration of Air Transport of the Andean Community (CAN, then Andean Pact until 10 Mar 1996), 1991**

1.4.1 Chapter 3, Article 7

*The Member Countries, in compliance with this Decision and pursuant to the provisions of the Andean Air Transport Policy, shall review the operating permits, bilateral*

*agreements or other administrative acts in effect between them and shall make any changes in accordance with them; **these they shall orient toward the free exchange of commercial air rights within the Subregion which are in the interest of the community and which ensure healthy competition and the quality and efficiency of international air transport service.***

1.5 **Eight Options for More Competitive Air Services with Fair and Equitable Opportunity among APEC Member Economies, 1994**

1.5.1 **Option 4: Air Freight** *the ASG recommended that APEC economies progressively remove restrictions in the operations of air freight services while ensuring **fair and equitable opportunity for the economies involved.***

1.5.2 **Option 7: Airlines' cooperative arrangements** *The ASG recommended that APEC economies facilitate cooperative arrangements such as code-sharing including third-country code-share and code-share over domestic sectors, joint operations and block space arrangements, where it can be shown to be of benefit to consumers and airline(s), and where there are no anti-competitive effects, and where fair and equitable opportunity for the economies involved can be ensured.*

1.5.3 **Option 8: Market access** *The ASG reached general consensus to recommend that APEC economies take an approach to progressively achieve more liberalised market access under their bilateral air services arrangements, while ensuring fair and equitable opportunity for the economies involved.*

1.6 **Multilateral Air Services Agreement (MASA) of the Caribbean Community (CARICOM), July 1996**

1.6.1 Article 14 – Fair Competition

- 1) *Member States shall allow a fair and equal opportunity for all CARICOM air carriers to compete in the air transportation covered by this Agreement.*
- 2) *Member States shall take all appropriate action within their respective jurisdictions to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of CARICOM air carriers.*
- 3) *Member States shall take into account the interests of CARICOM air carriers of other Member States so as not to affect unduly the services which the latter provide on the whole, or part, of the same routes on which their carriers provide a service.*
- 4) *Member States shall take into account the requirements of the public for transportation and the need for stability on the specific routes, and shall have as their primary objective the provision, at a reasonable load factor, of capacity adequate to meet the current and reasonably anticipated requirements for the carriage of passengers, cargo and mail on the specified routes.*

- 1.7 **Banjul Accord for an Accelerated Implementation of the Yamoussoukro Declaration, April 1997**
- 1.7.1 Article 10: Competition Rules
- Contracting Parties shall ensure fair opportunity on non-discriminatory basis for the designated airlines to effectively compete, in providing air transport services within their respective territories.*
- 1.8 **Decision Relating to the Implementation of the Yamoussoukro Declaration Concerning the Liberalization of Access to Air Transport Markets in Africa (Yamoussoukro II Ministerial Decision) of the African Union (AU, then Organization of African Unity (OAU), November 1999**
- 1.8.1 Article 7: Competition Rules
- 7.1 State Parties shall ensure fair opportunity on non-discriminatory basis for the designated African airline, to effectively compete in providing air transport services within their respective territory.*
- 1.9 **Multilateral Agreement on the Liberalization of International Air Transportation (MALIAT, “Kona” agreement), May 2001**
- 1.9.1 Article 11: Fair Competition
- Each Party shall allow a fair and equal opportunity for the designated airlines of all Parties to compete in providing the international air transportation governed by this Agreement.*
- 1.10 **Common Programme on Air Transport of the West African Economic and Monetary Union (UEMOA), June 2002**
- 1.10.1 A- Objectifs, Justification et Résultats Attendus du Programme Commun de Transport Aérien des États Membres de l’UEMOA (*Objectives, justifications, and expected results of the Common Programme*)
- c) Les résultats attendus de la mise en œuvre du programme commun de transport aérien dans les États membres de l’UEMOA sont
- une meilleure compétitivité et une plus grande efficacité des entreprises du secteur aérien : compagnies aériennes, gestionnaires d’aéroports, sociétés d’assistance en escale, catering... etc. pour résister à la concurrence et œuvrer à augmenter de façon significative le trafic passagers, fret et poste
- (The programme’s expected results...are : improved competitiveness and greater efficiency of the airline industry : airlines , airport managers, ground handling companies , catering etc. ... to withstand competition and work to significantly increase passenger traffic , freight and mail;)*
- 1.10.2 VI – Mise En Place d’un Mécanisme pour le Développement du Transport Aérien de l’UEMOA (*Establishment of a mechanism for the development of air transport in UEMOA*)

**2 – Objectifs visés (Objectives)**

assurer la compétitivité des entreprises de transport aérien face aux compagnies aériennes extérieures; (*ensure the competitiveness of air transport enterprises against external airlines*)

1.11 **Pacific Islands Air Services Agreement (PIASA) of Pacific Islands Forum, August 2003**

1.11.1 Article 2 : Objectives:

*The objectives of this Agreement are : (3) to improve the **competitiveness and efficiency** of airlines operating within the region governed by the Parties*

1.11.2 Article 13: Fair Competition

1. *Each Party shall allow a fair and equal opportunity for the designated airlines of the parties to **compete** in providing the international air transport governed by this Agreement*

1.12 **Air Transport Agreement among the Members States and Associate Members of the Association of Caribbean States, February 2004**

1.12.1 Article 13: Fair Competition

1) *Each Party shall allow a **fair and equal opportunity** to the designated airlines of all Parties to **compete in providing** the international air transport governed by this Agreement.*

2) *Each Party shall take all appropriate actions within their respective jurisdictions to avoid and eliminate all forms of unfair competitive practices.*

1.13 **Agreement on the Liberalization of Air Transport between the Arab States (Arab League), December 2004**

1.13.1 Article 9: Competition and Non-Discrimination

*The designated airline/airlines of any states party shall have equal and fair opportunity to exercise the rights stated in this Agreement with a view to enable it to participate effectively in providing air transport service among them in accordance with the rules of competition provided for in Annex 2, of this Agreement.*

1.14 **ASEAN Multilateral Agreement on the Full Liberalisation of Air Freight Services, May 2009**

1.14.1 Article 13: Fair Competition

*Each Contracting Party agrees:*

a) *that each designated airline shall have a **fair and equal opportunity to compete** in providing the international air freight services governed by this Agreement, and*



b) *to take action to eliminate all forms of discrimination and/or anti-competitive practices by that Contracting Party and/or its designated airlines that it deems to adversely affect the competitive position of a designated airline of any other Contracting Party.*

1.15 **ASEAN Multilateral Agreement on Air Services, May 2009**

1.15.1 Article 12: Fair Competition

*Each Contracting Party agrees:*

- a) *that each designated airline shall have a fair and equal opportunity to compete in providing the international air services governed by this Agreement; and*
- b) *to take action to eliminate all forms of discrimination and/or anti-competitive practices by that Contracting Party and/or its designated airline(s) that it deems to adversely affect the competitive position of a designated airline of any other Contracting Party.*

1.16 **ASEAN Multilateral Agreement on the Full Liberalisation of Passenger Air Services, November 2010**

1.16.1 Article 12: Fair Competition

*Each Contracting Party agrees:*

- a) *that each designated airline shall have a fair and equal opportunity to compete in providing the international air services governed by this agreement; and*
- b) *to take action to eliminate all forms of discrimination and/or anti-competitive practices by that Contracting Party and/or its designated airlines that it deems to adversely affect the competitive position of a designated airline of any other Contracting Party.*

1.17 **Air Transport Agreement: ASEAN Member States-China, November 2010**

1.17.1 Article 11 - Fair Competition

*Each Contracting Party shall allow a fair and equal opportunity for the designated airline(s) of all the Contracting Parties to compete in providing the international air services governed by this Agreement.*

*Each Contracting Party agrees to take action to eliminate all forms of discrimination and/or anti-competitive practices by a Contracting Party and/or its designated airline(s) that it deems to adversely affect the competitive position of a designated airline(s) of the other Contracting Parties.*

1.18 The OECD has also drafted a model multilateral agreement to “achieve substantial liberalisation of international air cargo services,” much as it proposed a model bilateral air services agreement with provisions for greater market access. The text is very similar to that contained in contemporary Open Skies Agreements.

1.19 **OECD Draft Multilateral Agreement**

1.19.1 Article 11 - Fair Competition

1. *Each Contracting Party shall allow a fair and equal opportunity for the designated air carriers of all Parties to **compete** in providing the international air cargo transportation governed by this Agreement.*

2. *Each Contracting Party shall allow the designated air carrier(s) of another Contracting Party to determine the frequency, type of aircraft, configuration and capacity to be used in conducting international air cargo transportation pursuant to this Agreement based upon **commercial considerations in the marketplace**. Consistent with this right, no Contracting Party shall act to limit the volume of traffic, frequency or regularity of service, or the aircraft type or types operated by the designated air carriers of the other Parties, except as may be required for customs, technical, operational, or environmental reasons under uniform conditions consistent with Article 15 of the Convention. The Contracting Party wishing to apply such conditions must provide, as soon as possible, appropriate evidence to the other Contracting Parties of the need for such conditions, so as to allow for any consultations pursuant to Article 21 prior to the date of effectiveness of such conditions.*

3. *No Contracting Party shall impose, or permit any person or body under its jurisdiction to impose, on a designated air carrier of any other Contracting Party, any requirement or condition, including a first refusal requirement, uplift ratio, or no-objection fee or any other requirement with respect to capacity, frequency or traffic, which is inconsistent with the purposes of this Agreement.*

4. *No Contracting Party shall require the filing of schedules, programs for charter flights, or operational plans by the designated air carriers of the other Contracting Parties for approval, except as may be required on a non-discriminatory basis to enforce the uniform conditions foreseen by paragraph 2 of this Article.*

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## APPENDIX C

### EUROPEAN UNION AGREEMENTS

#### 1.1 **Single Aviation Market of the European Union (EU, then European Community until 31 Oct 1993), July 1992**

1.2 Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes.

**Preamble:** Whereas, *taking into account the competitive market situation*, provision should be made to *prevent unjustifiable economic effects* on air carriers;

**Article 9, Section 2.** Action taken by a Member State in accordance with paragraph 1 shall:

- be non-discriminatory on grounds of nationality or identity of air carriers,
- have a limited period of validity, not exceeding three years, after which it shall be reviewed,
- not unduly affect the objectives of this Regulation,
- *not unduly distort competition* between air carriers,
- *not be more restrictive than necessary* in order to relieve the problems.

1.3 The “Agreement between the European Economic Community and Norway and Sweden on Civil Aviation” and “Agreement between the European Community and Swiss on Air Transport” expand competition provisions of EU agreement to Norway, Sweden and Switzerland, but no major new passages.

#### 1.3.1 **Agreement on the European Economic Area (EEA), Annex 13 Transport, January 1994, last updated July 2015**

The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which *have as their object or effect the prevention, restriction or distortion of competition within the common market*, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

1.3.2 In contrast to the pro-competitive passage above, note the more traditional language of the Euro-Mediterranean Aviation Agreement with Jordan — and then contrast its language with the more liberal phrasing of a similar agreement signed with Israel less than three years later. Specifically, the Israeli agreement deletes the earlier reference to “fair and equal opportunities to operate the Agreed Services,” instead stating a “joint objective to have a fair and competitive environment.”

1.4 **Multilateral Agreement on the Establishment of a European Common Aviation Area (ECAA), June 2006**

1.4.1 Rules on Competition and State Aid Referred to in Article 14 of the Main Agreement  
Article 1: State monopolies

An Associated Party shall progressively adjust any State monopolies of a commercial character so as to ensure that, by the end of the second period referred to in the Protocol to this Agreement which contains the transitional measures with regard to the Associated Party concerned, *no discrimination regarding the conditions under which goods are procured and marketed* exists between nationals of the Contracting Parties. The Joint Committee shall be informed of the measures adopted to attain this objective.

1.4.2 Article 3: Competition rules and other economic provisions

1. The *following practices are incompatible* with the proper functioning of this Agreement, in so far as they may affect trade between two or more Contracting Parties:

(i) all agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition;

(ii) abuse by one or more undertakings of a dominant position in the territories of the Contracting Parties as a whole or in a substantial part thereof;

(iii) any State aid which distorts or threatens to distort competition by favouring certain undertakings or certain products.

1.5 **Euro-Mediterranean Aviation Agreement: EU – Morocco, December 2006**

1.5.1 Article 7 - Competitive Environment

*Within the scope of this Agreement, the provisions of Chapter II ('Competition and other Economic Provisions') of Title IV of the Association Agreement shall apply, except where more specific rules are contained in this Agreement.*

1.5.2 Article 8 – Subsidies

1. *The Contracting Parties recognise that public subsidies to air carriers distort or threaten to distort competition by favouring certain undertakings in the provision of air transport services, that they jeopardise the basic objectives of the Agreement and that they are incompatible with the principle of an open aviation area.*

2. *When a Contracting Party deems it essential to grant public subsidies to an air carrier operating under this Agreement in order to achieve a legitimate objective, it shall see to it that such subsidies are proportionate to the objective, transparent and designed to minimise, to the extent feasible, their adverse impact on the air carriers of the other Contracting Party. The Contracting Party intending to grant any such subsidy shall inform the other Contracting Party of its intention and shall make sure that such subsidy is consistent with the criteria laid down in this Agreement.*

3. *If one Contracting Party believes that a subsidy provided by the other Contracting Party, or, as the case may be, by a public or governmental body of a country other than the Contracting Parties, is inconsistent with the criteria laid down in paragraph 2, it may request a meeting of the Joint Committee, as provided in Article 22*

*to consider the issue and develop appropriate responses to concerns found to be legitimate.*

4. *When a dispute cannot be settled by the Joint Committee, the Contracting Parties retain the possibility of applying their respective anti-subsidy measures.*

5. *The provisions of this Article shall apply without prejudice to the Contracting Parties' laws and regulations regarding essential air services and public service obligations in the territories of the Contracting Parties.*

## 1.6 **Air Transport Agreement – Open Skies: EU – USA, April 2007**

### 1.6.1 Article 14 - Government subsidies and support

1. *The Parties recognise that government subsidies and support may adversely affect the fair and equal opportunity of airlines to compete in providing the international air transportation governed by this Agreement.*

2. *If one Party believes that a government subsidy or support being considered or provided by the other Party for or to the airlines of that other Party would adversely affect or is adversely affecting that fair and equal opportunity of the airlines of the first Party to compete, it may submit observations to that Party. Furthermore, it may request a meeting of the Joint Committee as provided in Article 18, to consider the issue and develop appropriate responses to concerns found to be legitimate.*

3. *Each Party may approach responsible governmental entities in the territory of the other Party, including entities at the State, provincial or local level, if it believes that a subsidy or support being considered or provided by such entities will have the adverse competitive effects referred to in paragraph*

4. *If a Party decides to make such direct contact it shall inform promptly the other Party through diplomatic channels. It may also request a meeting of the Joint Committee.*

5. *Issues raised under this Article could include, for example, capital injections, cross subsidisation, grants, guarantees, ownership, relief or tax exemption, by any governmental entities.*

## 1.7 **Agreement between the European Community and the West African Economic and Monetary Union on certain aspects of air services, November 2009**

### 1.7.1 Article 6: Compatibility with competition rules

1. Notwithstanding any other provision to the contrary, nothing in each of the bilateral agreements listed in Part A of the Annexes to this Agreement shall:

(i) favour the adoption of agreements between undertakings, decisions by associations of undertakings or concerted *practices that prevent, distort or restrict competition*;

(ii) reinforce the effects of any such agreement, decision or concerted practice; or

(iii) *delegate to private economic operators the responsibility for taking measures that prevent, distort or restrict competition.*

## 1.8 **Air Transport Agreement – Open Skies: EU – Canada, December 2009**

### 1.8.1 Article 14 - Competitive Environment

1. *The Parties acknowledge that it is their joint objective to have a fair and competitive environment for the operation of the air services. The Parties recognise that fair competitive practices by airlines are most likely to occur where these airlines operate*

*on a fully commercial basis and are not state subsidised. They recognise that matters, such as, but not limited to the conditions under which airlines are privatised, the removal of competition distorting subsidies, equitable and non-discriminatory access to airport facilities and services and to computer reservation systems are key factors to achieve a fair and competitive environment.*

*2. If a Party finds that conditions exist in the territory of the other Party that would adversely affect a fair and competitive environment and its airlines' operation of the air services under this Agreement, it may submit observations to the other Party. Furthermore, it may request a meeting of the Joint Committee. The Parties accept that the degree to which the objectives in the Agreement related to a competitive environment may be undermined by a subsidy or other intervention is a legitimate subject for discussion in the Joint Committee.*

*3. Issues that may be raised under this Article 14 include, but are not limited to, capital injections, cross subsidisation, grants, guarantees, ownership, tax relief or tax exemption, protection against bankruptcy or insurance by any government entities. Subject to paragraph 4 of Article 14, a Party, upon notification to the other Party, may approach responsible government entities in the territory of the other Party including entities at the state, provincial or local level to discuss matters relating to this Article.*

*4. The Parties recognise the cooperation between their respective competition authorities as evidenced by the "Agreement between the Government of Canada and the European Communities regarding the Application of their Competition Laws" done at Bonn on 17 June 1999. [...]*

## 1.9 **Euro-Mediterranean Aviation Agreement: E.U. – Jordan, December 2010**

### 1.9.1 Article 7 - Competitive Environment

*1. The Contracting Parties reaffirm the application to this Agreement of the principles of Chapter II of Title IV of the Association Agreement.*

*2. The Contracting Parties acknowledge that it is their joint objective to secure fair and equal opportunities for the air carriers of both sides to operate the Agreed Services. In order to achieve this, it is necessary to have a fair and competitive environment for the operation of air services. The Contracting Parties recognise that fair competitive practices by air carriers are most likely to occur where these air carriers provide air services on a fully commercial basis and are not subsidised.*

*3. When a Contracting Party deems it essential to grant public subsidies to an air carrier operating under this Agreement in order to achieve a legitimate objective, it shall see to it that such subsidies are proportionate to the objective, transparent and designed to minimise, to the extent feasible, their adverse impact on the air carriers of the other Contracting Party. The Contracting Party intending to grant any such subsidy shall inform the other Contracting Party of its intention and shall make sure that such subsidy is consistent with the criteria laid down in this Agreement.*

*4. If one Contracting Party finds that conditions exist in the Territory of the other Contracting Party, in particular due to a subsidy, inconsistent with the criteria laid down in paragraph 3 which would adversely affect the fair and equal opportunity of its air carriers to compete, it may submit observations to the other Contracting Party. Furthermore, it may request a meeting of the Joint Committee, as provided for in Article 21 (The Joint Committee) of this Agreement. From the receipt of such a request consultations shall start within 30 days. When a dispute cannot be settled by the Joint Committee, the Contracting Parties retain the possibility of applying their respective anti-subsidy measures.*

5. *The actions, referred to in paragraph 4 of this Article, shall be appropriate, proportionate and restricted with regard to scope and duration to what is strictly necessary. They shall be exclusively directed towards the air carrier or air carriers benefiting from a subsidy or the conditions referred to in this Article, and shall be without prejudice to the right of either Contracting Party to take action under Article 23 (Safeguard Measures) of this Agreement.*

6. *Each Contracting Party, upon notification to the other Contracting Party, may approach responsible government entities in the territory of the other Contracting Party including entities at the state, provincial or local level to discuss matters relating to this Article.*

## 1.10 **Euro-Mediterranean Aviation Agreement: European Union – Israel, July 2013**

### 1.10.1 Article 7 - Competitive Environment

1. *The Contracting Parties reaffirm the application of the provisions of Chapter 3 ("Competition") of Title IV of the Association Agreement to this Agreement.*

2. *The Contracting Parties acknowledge that it is their joint objective to have a fair and competitive environment for the operation of air services. The Contracting Parties recognise that fair competitive practices by air carriers are most likely to occur where these air carriers operate on a fully commercial basis and are not subsidised, and where neutral and non-discriminatory access to airport facilities, services, and slot allocation is ensured.*

3. *If one Contracting Party finds that conditions exist in the territory of the other Contracting Party, in particular due to subsidy, which would adversely affect the fair and equal opportunity of its air carriers to compete, it may submit observations to the other Contracting Party. Furthermore, it may request a meeting of the Joint Committee, as provided for in Article 22 of this Agreement. Consultations shall start within 30 days of receipt of such a request. Failure to reach a satisfactory agreement within 30 days from the start of consultations shall constitute grounds for the Contracting Party that requested the consultations to take action to refuse, withhold, revoke, suspend or impose appropriate conditions on the authorisations of the air carrier(s) concerned, consistent with Article 4.*

4. *The actions referred to in paragraph 3 shall be appropriate, proportionate and restricted with regard to scope and duration to what is strictly necessary. They shall be exclusively directed towards the air carrier(s) benefiting from the conditions referred to in paragraph 3, and shall be without prejudice to the right of either Contracting Party to take action under Article 23.*

5. *The Contracting Parties agree that the participation of the Israeli Government to help cover additional security expenses incurred by the Israeli air carriers as a result of Israeli Government instructions, is not an unfair competitive practice and is not considered as a subsidy for the purpose of this article provided that:*

- (a) *such support covers exclusively costs necessarily incurred by the air carriers of Israel when implementing extra security measures required by the Israeli authorities which are not imposed on, or incurred by, air carriers of the European Union; and*
- (b) *such security costs are clearly identified and quantified by Israel; and*

(c) *the Joint Committee receives, once a year, a report describing the total sum of the security expenses and the rate of participation of the Israeli government in the previous year.*

6. *Each Contracting Party, upon notification to the other Contracting Party, may approach responsible government entities in the territory of the other Contracting Party including entities at the state, provincial or local level to discuss matters relating to this Article.*

7. *The provisions of this Article shall apply without prejudice to the Contracting Parties' laws and regulations regarding public service obligations in the territories of the Contracting Parties*

#### 1.11 **EU recommended fair competition clause**

*The Contracting Parties acknowledge that it is their joint objective to have a fair and competitive environment and fair and equal opportunity for the airlines of both Contracting Parties to **compete** in operating the agreed services on the specified routes. Therefore, the Contracting Parties shall take all appropriate measures to ensure the full enforcement of this objective.*

*The Contracting Parties assert that **free, fair and undistorted competition is important to promote the objectives of this Agreement** and note that the existence of comprehensive competition laws and of an independent competition authority as well as the sound and effective enforcement of their respective competition laws are important for the efficient provision of air transport services. The competition laws of each Contracting Party addressing the issues covered by this Article, as amended from time to time, shall apply to the operation of the air carriers within the jurisdiction of the respective Contracting Party. The Contracting Parties share the objectives of compatibility and convergence of Competition law and of its effective application. They will cooperate as appropriate and where relevant on the effective application of competition law, including by allowing the disclosure, in accordance with their respective rules and jurisprudence, by their respective airline(s) or other nationals of information pertinent to a competition law action by the competition authorities of each other.*

*Nothing in this Agreement shall affect, limit or jeopardise in any way the authority and powers of the relevant competition authorities and courts of either Contracting Party (and of the European Commission), and all matters relating to the enforcement of competition law shall continue to fall under the exclusive competence of those authorities and courts. Therefore, any action taken pursuant to this Article by a Contracting Party shall be without prejudice to any possible actions taken by those authorities and courts.*

*Any action taken pursuant to this Article shall fall under the exclusive responsibility of the Contracting Parties and shall be exclusively directed towards the other Contracting Party and/or to airline(s) providing air transport services to/from the Contracting Parties. Such action shall not be subject to the dispute settlement procedure foreseen in [refer to the relevant Article of the ASA].*

#### Unfair competition

*Each Contracting Party shall **eliminate all forms of discrimination or unfair practices** which would adversely affect the fair and equal opportunity of the airlines of the other Contracting Party to **compete** in providing air transport services.*



Public subsidies and support

*Neither Contracting Party shall provide or permit public subsidies or support to their respective airlines if these subsidies or support would significantly and adversely affect, in an unjustified way, the fair and equal opportunity of the airlines of the other Contracting Party to compete in providing air transport services. Such public subsidies or support may include, but are not limited to: cross-subsidisation; the setting-off of operational losses; the provision of capital; grants; guarantees; loans or insurance on privileged terms; protection from bankruptcy; foregoing the recovery of amounts due; foregoing a normal return on public funds invested; tax relief or tax exemptions; compensation for financial burdens imposed by public authorities; and access on a discriminatory or non-commercial basis to air navigation or airport facilities and services, fuel, ground handling, security, computer reservation systems, slot allocation or other related facilities and services necessary for the operation of air services.*

*When a Contracting Party provides public subsidies or support in the sense of paragraph 6 above to an airline, it shall ensure the transparency of such measure through any appropriate means, which may include requiring that the airline identifies the subsidy or support clearly and separately in its accounts.*

*Each Contracting Party shall, at the request of the other Contracting Party, provide to the other Contracting Party within a reasonable time financial reports relating to the entities under the jurisdiction of the first Contracting Party, and any other such information that may be reasonably requested by the other Contracting Party to ensure that the provisions of this Article are being complied with. This may include detailed information relating to subsidies or support in the sense of paragraph 6 above. The submission of such information may be subject to its confidential treatment by the Contracting Party requesting access to the information.*

*Without prejudice to any action undertaken by the relevant competition authority and/or court for the enforcement of the rules referred to in paragraphs 2.5.1 and 2.6.1:*

- a) if one Contracting Party finds that an airline is being subject to discrimination or unfair practices in the sense of paragraphs 2.5.1 and 2.6.1 above and that this can be substantiated, it may submit observations in writing to the other Contracting Party. After informing the other Contracting Party, a Contracting Party may also approach responsible government entities in the territory of the other Contracting Party, including entities at the central, regional, provincial or local level to discuss matters relating to this Article. Moreover, a Contracting Party may request consultations on this matter with the other Contracting Party with a view to solving the problem. Such consultations shall start within a period of thirty (30) days of the receipt of the request. In the meantime, the Contracting Parties shall exchange sufficient information to enable a full examination of the concern expressed by one of the Contracting Parties.*
- b) if the Contracting Parties fail to reach a resolution of the matter through consultations within thirty (30) days from the start of consultations or consultations do not start within a period of thirty (30) days of the receipt of the request concerning an alleged violation of paragraphs 5 or 6 above, the Contracting Party which requested the consultation shall have the right to suspend the exercise of the rights specified in this Agreement by the airline(s) of the other Contracting Party by refusing, withholding, revoking or suspending the operating authorisation/permit, or to impose such conditions as it may*

*deem necessary on the exercise of such rights, or impose duties or take other actions. Any action taken pursuant to this paragraph shall be appropriate, proportionate and restricted with regard to scope and duration to what is strictly necessary.*

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**APPENDIX D**

**OTHER AGREEMENTS/ARRANGEMENTS**

**1. GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)**

**1.1 Article 15: Subsidies**

*Members recognize that, in certain circumstances, subsidies may have distortive effects on trade in services. Members shall enter into negotiations with a view to developing the necessary multilateral disciplines to avoid such trade-distortive effects. The negotiations shall also address the appropriateness of countervailing procedures. Such negotiations shall recognize the role of subsidies in relation to the development programmes of developing countries and take into account the needs of Members, particularly developing country Members, for flexibility in this area. For the purpose of such negotiations, Members shall exchange information concerning all subsidies related to trade in services that they provide to their domestic service suppliers.*

*Any Member which considers that it is adversely affected by a subsidy of another Member may request consultations with that Member on such matters. Such requests shall be accorded sympathetic consideration.*

— END —