



WORKING PAPER

**SEVENTH WORLDWIDE AIR TRANSPORT CONFERENCE
(ATCONF/7)**

Agenda Item 3: Strengthening regulatory and institutional frameworks

3.3 Strengthening emergency planning mechanism and consumer protection for a resilient aviation system

**NAVIGATING THE INTERSECTION OF ONLINE TRAVEL AGENCIES
(OTAs), PASSENGER LIABILITIES, AND INDIRECT CABOTAGE IN
CIVIL AVIATION**

(Presented by Indonesia)

EXECUTIVE SUMMARY

This paper presents the regulatory, operational, and jurisdictional challenges arising from the growing role of Online Travel Agencies (OTAs) and digital air travel distribution. It highlights emerging practices such as virtual interlining, self-transfer arrangements, and algorithmically generated itineraries via foreign hubs, which may create gaps in passenger protection and raise regulatory concerns relating to liability, fare regulation, cabotage, and national regulatory authority. The paper proposes policy considerations for the International Civil Aviation Organization (ICAO) and Member States to address these emerging challenges.

Action: The conference is invited to:

- a) review the information and assessment presented in this paper; and
- b) consider the recommendations set out in paragraph 5 of this paper.

<i>Strategic Goal:</i>	This working paper relates to Strategic Goal: <i>The Economic Development of Air Transport Assures the Delivery of Economic Prosperity and Societal Well-Being for All.</i>
<i>Financial implications:</i>	None
<i>References:</i>	<i>Convention on International Civil Aviation (Chicago Convention 1944)</i> <i>Convention for the Unification of Certain Rules for International Carriage by Air (Montreal Convention, 1999)</i> <i>Doc 9587, Policy and Guidance Material on the Economic Regulation of International Air Transport</i> <i>Doc 9626, Manual on the Regulation of International Air Transport</i> <i>Annex 9 – Facilitation</i>

1. INTRODUCTION

1.1 The rapid evolution of digital distribution in air transport, driven by Online Travel Agencies (OTAs) and algorithmic aggregators, has reshaped how passengers search for, bundle, and purchase air travel across global markets. In archipelagic States such as Indonesia, where air transport is vital for socio-economic integration and national connectivity, digital ticketing platforms serve as important gateways for air travel.

1.2 Despite clear benefits in consumer access and price transparency, uncoordinated distribution practices introduce regulatory, operational, and jurisdictional challenges. Modern practices, such as algorithmically constructed "virtual interlining" and self-transfer routing, may create uncertainty regarding the application of traditional carrier liability frameworks and expose passengers to potential gaps in protection in the event of travel disruptions.

1.3 Furthermore, the algorithmic creation of itineraries connecting domestic city pairs via foreign international hubs may raise concerns regarding potential forms of "indirect cabotage". Such practices may also raise questions regarding the application of national air service agreements and domestic economic regulations including fare ceilings, as well as the exercise of national regulatory authority over domestic air transport.

1.4 This working paper examines the operational challenges and potential legal and regulatory gaps associated with third-party distribution models and presents policy recommendations for consideration by the International Civil Aviation Organization (ICAO) and Member States.

2. BACKGROUND AND DIGITAL DISTRIBUTION DYNAMICS

2.1 Air ticket distribution has transitioned from direct airline sales and traditional Global Distribution Systems (GDS) to dynamic digital platforms and global aggregators. OTAs leverage search algorithms to compile itineraries across non-affiliated air carriers, offering passengers unbundled fares and customized connections.

2.2 While these technological developments enhance market reach, they create structural separation between the operating air carrier and the end consumer:

- **Communication Barriers:** Operating carriers may lack direct contact details for passengers during irregular operations (IRROPS), limiting real-time notification capabilities under ICAO Annex 9 (Facilitation), Chapter 8, which emphasizes the smooth processing and assistance of passengers during flight disruptions;
- **Virtual Interlining:** Platforms may bundle separate tickets from non-partner airlines into single itineraries without interline traffic agreements, leaving passengers without standard interline protections, such as automated baggage transfer or through-ticketing liabilities;
- **Regulatory and Jurisdictional Challenges:** Third-party intermediaries often operate across borders and may fall outside the direct regulatory reach of local civil aviation authorities (CAAs), creating challenges in applying domestic air tariff rules, ICAO *Policy and Guidance Material on the Economic Regulation of International Air Transport* (Doc 9587), and consumer protection requirements.

3. FRAGMENTED PASSENGER LIABILITIES AND CONSUMER PROTECTION

3.1 Statutory passenger protection frameworks, including the *Convention for the Unification of Certain Rules for International Carriage by Air* (Montreal Convention of 1999), ICAO Doc 9587 (Part 5 – ICAO Core Principles on Consumer Protection), and applicable domestic legislation, establish liability and consumer protection frameworks applicable to air carriers.

3.2 Third-party unbundling may complicate the application of this protection framework, creating potential legal and operational ambiguity across three core areas:

Operational Area	Operating Carrier Role	OTA Intermediary Role	Passenger Exposure
Missed Connections	Liable strictly for the individual flight segment specified in its contract of carriage.	Offers optional third-party rebooking insurance; holds no statutory duty to rebook.	Passenger may be required to purchase new tickets and bear additional accommodation and other expenses in the event of missed self-transfers.
Baggage Transfer	Transfers baggage only across recognized interline and airline alliance partners under ICAO Annex 9 standards.	Holds no physical handling capability or air side operational presence.	Passenger may be required to exit air side areas, reclaim baggage, clear customs and immigration procedures, and re-check baggage.
Refund Rights & Processing	Issues ticket refunds directly to the booking platform / OTA of record.	Controls payout timelines; frequently deducts platform processing fees.	Passengers may experience delays in reimbursement or incur double administrative deductions.

4. INDIRECT CABOTAGE AND NATIONAL AIR SOVEREIGNTY

4.1 The principle of national sovereignty over territorial airspace, established under Article 1 of the Convention on International Civil Aviation (Chicago Convention), provides that every State has complete and exclusive sovereignty over the airspace above its territory. Article 7 explicitly recognizes the right of Member States to refuse permission to foreign aircraft to take on board passengers or cargo for carriage between two domestic points (cabotage prohibition). Guidance on traffic rights and cabotage restrictions is further detailed in ICAO *Manual on the Regulation of International Air Transport* (Doc 9626).

4.2 Mechanism of Indirect Cabotage: Algorithms used by global OTAs generate composite itineraries linking two purely domestic points (e.g., Jakarta [CGK] to Medan [KNO]) via a foreign hub (e.g., Kuala Lumpur [KUL] or Singapore [SIN]) utilizing foreign airlines.

4.3 Regulatory and Economic Challenges:

- Circumvention of Traffic Rights: algorithmic routing of domestic origin-destination traffic through foreign transit points functions as de facto indirect cabotage, bypassing bilateral air service agreements and ICAO Doc 9626 principles on market access;
- Subversion of Economic Regulations: Foreign-hub routing bypasses domestic economic oversight, including regulated fare ceilings (*Tarif Batas Atas*) designed to keep domestic air travel accessible and affordable; and
- Economic Leakage: Revenue generated from domestic traffic flows is diverted away from local air carriers and national infrastructure to foreign hubs and carriers.

5. RECOMMENDATION

5.1 The following recommendations are proposed for consideration by the conference:

- a) Recognize the regulatory and consumer protection challenges arising from uncoordinated digital ticket aggregation and virtual interlining;
- b) Reaffirm the sovereign right of Member States under Article 7 of the Chicago Convention and the guidance in ICAO Doc 9626 to protect domestic traffic rights from algorithmic practices that yield indirect cabotage;
- c) Encourage Member States to adopt regulatory frameworks aligned with ICAO Doc 9587 (Core Principles on Consumer Protection), requiring OTAs and digital platforms to:
 - i. *Implement Algorithmic Safeguards*: Restrict search engines from displaying indirect cabotage itineraries for purely domestic origin-destination pairs without regulatory consent;
 - ii. *Mandate Clear Disclosures*: Provide clear pre-purchase notifications to passengers when itineraries involve self-transfers, manual baggage re-checking, or uncoordinated carrier segments; and
 - iii. *Enforce Intermediary Accountability*: Establish clear legal obligations holding platforms accountable for customer support and financial restitution during multi-carrier disruption events.
- d) Request ICAO to update ICAO Doc 9587 and ICAO Doc 9626 to include comprehensive guidelines on digital ticket distribution, virtual interlining practices, and harmonized consumer protection approaches for global air transport.

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