



WORKING PAPER

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

Montréal, HQ, 16 to 20 November 2026

Agenda Item 3: Strengthening regulatory and institutional frameworks

3.2: Enhancing air connectivity through progressive economic and regulatory aviation frameworks for international air transport

**INSTITUTIONAL FRAMEWORK FOR COMPETITION AS A CONDITION FOR EFFECTIVE
AIR TRANSPORT LIBERALIZATION**

(Presented by Chile and supported by 18 LACAC Member States²)

EXECUTIVE SUMMARY

This paper argues that the benefits of air transport liberalization depend not only on international agreements, but also on the existence of an institutional framework for competition that is capable of safeguarding the rights of operators and users. Such a framework operates across two complementary dimensions: an external dimension concerning fair competition among carriers from different States, and an internal one relating to how each State allocates among its operators the scarce commercial aviation rights obtained by international negotiation. While this internal dimension is not widely discussed in the International Civil Aviation Organization (ICAO) guidance material, it is in large measure what determines whether the provisions of air services agreements will translate into increased supply, better frequencies and lower fares. Based on its experience, Chile outlines here a set of best practices, acknowledges their limitations and costs, and invites the Conference to promote the strengthening of competition policies and institutions and their explicit recognition in air services agreements.

Action: The conference is invited to:

- a) note the information contained in this paper and, in particular, Chile's experience in the allocation of limited frequencies and the role of its competition authorities;
- b) recognize that the effectiveness of air transport liberalization depends on the existence of competition policies and institutions capable of preventing the concentration of scarce air traffic rights and safeguarding market contestability;
- c) invite States to strengthen their competition policies and institutions, apply them to the domestic allocation of traffic rights in accordance with the principles set forth in paragraph 4.1 and expressly recognize them in their air services agreements;
- d) recommend that the Council update the *Policy and Guidance Material on the Economic Regulation of International Air Transport* (Doc 9587) to include guidance on the allocation of scarce traffic rights—timeframes, competitive allocation mechanisms, requirements for actual use and public

¹ Spanish version provided by Chile.

² Argentina, Belize, Bolivia (Plurinational State of), Brazil, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Jamaica, Nicaragua, Panama, Paraguay, Peru and Uruguay.

	availability of information—and on coordination between aviation authorities and competition authorities; and (e) recommend that ICAO develop a model competition clause that can be incorporated into air services agreements and the Organization's model agreements and promote cooperation among the competition authorities of States parties, including reporting, information exchange and the application of the principles of positive and negative comity.
<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>	This working paper has no financial implications for the Organization.
<i>References:</i>	Doc 7300, <i>Convention on International Civil Aviation</i>, Article 44 Doc 9587, <i>Policy and Guidance Material on the Economic Regulation of International Air Transport</i>, including basic principles of fair competition and model air services agreements Doc 9626, <i>Manual on the Regulation of International Air Transport</i> ATConf/6 (2013) Report and Recommendations

1. INTRODUCTION

1.1 Since 1979, Chile has implemented an “open skies” commercial aviation policy, incorporating market-based principles into commercial aviation. This policy is reflected today in 83 commercial aviation agreements in force, no limits on foreign ownership of airlines, open domestic air services market without reciprocity requirements, Chile's participation in numerous multilateral agreements such as the Multilateral Agreement on the Liberalization of International Air Transport (MALIAT), and more recently, the signing of the South American Air Liberalization Agreement (ALAS) on 14 July 2026.

1.2 Notwithstanding this openness, it should be noted that traffic rights under some bilateral agreements remain subject to frequency limitations, as the industry's opening to international competition has been shaped both by the protectionist policies of some States and by the reciprocity requirements of others. In such markets, which are often those with the highest traffic volumes, frequencies cease to be a mere operational parameter and become a scarce resource whose control determines who can compete. As a result, an agreement may increase the number of available frequencies, but the market will remain concentrated if the domestic allocation mechanism allows a dominant operator to accumulate them indefinitely. That is, what the government gains at the negotiating table may be lost at the allocating table.

1.3 This paper is submitted for the consideration of the Conference under Agenda Item 3.2 and is directly related to Agenda Item 3.1, as the strengthening of competition institutions is part of the broader institutional framework issues under consideration. It aims to describe the contribution of competition institutions to correcting regulatory asymmetries, with the specific measures proposed below.

2. COMPETITION IN THE CHICAGO SYSTEM: A TWO-DIMENSIONAL APPROACH

2.1 Concern for competition is inherent in the Convention on International Civil Aviation (Chicago Convention): Article 44 mandates the Organization to ensure that every contracting State has a fair opportunity to operate international airlines and to avoid discrimination between Contracting States. In the contemporary interpretation reflected in *the Policy and Guidance Material on the Economic Regulation of International Air Transport* (Doc 9587), the emphasis has shifted from restraining competition to ensuring fair conditions for competition. It should be noted that this safeguard has an external dimension, relating to fair competition among carriers from different States. This is already well covered in the International Civil Aviation Organization (ICAO) documentation, as the basic principles of fair competition

and the standard clauses contained in ICAO model air services agreements already provide a useful reference framework.

2.2 The internal dimension is different and has not been discussed in existing guidance material, as the distribution of rights among the operators of the State that has obtained them has traditionally been regarded as a matter of domestic law, falling outside the purview of international instruments. While this is understandable, it has direct effects on the object and purpose of air services agreements, as frequencies allocated free of charge, indefinitely and without any requirement for actual use may end up strengthening the position of a particular airline rather than expanding the options available to users, and the counterpart State may not receive the reciprocal benefit expected. For this reason, Chile considers that the Conference should treat competition as a cross-cutting principle of economic regulation rather than as a stand-alone chapter in air services agreements.

3. **LIMITED FREQUENCIES AS A BARRIER TO MARKET ENTRY: THE CHILEAN EXPERIENCE**

3.1 Chile's competition authorities have defined traffic rights as the authorization granted by one State to another to commercially operate a weekly service on a given route in its airspace. Where such rights are limited, the authorities have regarded frequencies as an essential input for the provision of air services and have viewed the allocation of such frequencies as a legal barrier to entry in the relevant market. This leads to a practical consequence involving all States with restrictive agreements: a dominant operator may have an incentive to acquire frequencies for purposes other than their commercial use; to wit, either to bar entry of potential competitors or to deter them by threatening to increase supply on the challenged route. In other words, concentration is not merely a theoretical possibility but a foreseeable consequence of institutional design.

3.2 As an example, a merger between two airlines was submitted in 2011 for approval by Chile's competition tribunal. The transaction was approved subject to the following conditions: that the resulting airline surrender a number of fifth freedom frequencies from the region's main hub and that it refrain from participating in future tenders on the same route whenever it held 75 per cent or more of the allocated frequencies and other airlines were interested in securing them. This example shows that the intervention of the competition authority provided an additional safeguard beyond those afforded by aviation regulations.

4. **BEST PRACTICE PRINCIPLES PROPOSED BY CHILE**

4.1 Based on the above experience, Chile believes that the following principles could guide the domestic allocation of scarce commercial aviation rights:

- a) **time-limited allocation.** Scarce rights should be allocated for a specified period, regardless of the mechanism used, to avoid indefinite allocations that entrench the market structure;
- b) **a competitive, transparent and non-discriminatory mechanism.** The allocation process should be conducted through public procedures following transparent rules and objective criteria;
- c) **actual use.** Preserving the right to use a given frequency should be conditional upon its actual use, through pre-established revocation mechanisms or minimum use requirements over a specified period, supported by ongoing use monitoring, a public record of flights actually operated, and an explicit withdrawal mechanism;

- d) **exceptional remedies.** Where competitive conditions on a route so warrant, remedies such as frequency holding caps or frequencies set aside for new entrants should be employed on a case-by-case basis, and preferably with the endorsement of the competition authority;
- e) **institutional coordination.** The aviation authority and the competition authority should implement stable coordination channels, including prior consultation on tender specifications and the reciprocal exchange of information on the actual use of rights; and
- f) **recognition in the agreements.** Air services agreements should expressly recognize the applicability of each party's competition law, provide for consultations between the relevant authorities and avoid resorting to unilateral remedies before those mechanisms have been exhausted.

5. CONCLUSION

5.1 Market access liberalization and competition policy are complementary rather than interchangeable: the former expands opportunities to compete, while the latter ensures that those opportunities translate into fair and effective competition, to the benefit of users.

5.2 As long as agreements with limited weekly frequencies remain in force, those frequencies will continue to constitute an essential input and a legal barrier to market entry. If allocated free of charge, for an indefinite period and without any requirement for actual use, they can entrench dominant positions and, in practice, undermine the benefits secured through international negotiations. Against this backdrop, it is reasonable to wonder what reciprocal benefit the other State derives when the frequencies it has granted are stuck in the hands of an already dominant operator, without any time limit or requirement for actual use.

5.3 The internal dimension of competition, namely, the domestic allocation of rights, has a direct impact on the object and purpose of air services agreements and on the effective reciprocity of the concessions they provide. It therefore cannot be regarded as a matter entirely outside the scope of such agreements. Chile's experience demonstrates that specialized institutions can help correct such asymmetries through flexible instruments that are compatible with legal certainty and operational continuity.

5.4 Accordingly, given that ICAO guidance has focused primarily on the external dimension, the Organization has an opportunity to develop and systematize best practices for the allocation of limited traffic rights and for coordination between aviation and competition authorities. The explicit recognition of competition policy in air services agreements, together with mechanisms for consultation and cooperation among authorities, can further enhance regulatory predictability and reduce the risk of unilateral measures.