



WORKING PAPER

ASSEMBLY — 39TH SESSION

ECONOMIC COMMISSION

Agenda Item 39: Economic Regulation of International Air Transport — Policy

**QCAA RECOMMENDATIONS ON A NUMBER OF ICAO POLICIES
IN THE FIELD OF AIR TRANSPORT REGULATION**

(Presented by Qatar)

EXECUTIVE SUMMARY

As work is currently being conducted at the level of ICAO's Air Transport Regulation Panel (ATRP) on issues such as the development of an international agreement for the liberalization of market access and the liberalization of air carrier ownership and control, the Qatar Civil Aviation Authority (QCAA) has developed some views on a number of key provisions that are under discussion at the ATRP level. Our views also touch upon some of ICAO's general policies in the field of air transportation.

The QCAA views are primarily based on:

- a) relevant resolutions of ICAO's 38th Assembly;
- b) the outcome of the Sixth Worldwide Air Transport Conference in 2013, and
- c) existing mechanisms and guiding principles within ICAO for key issues such as fair competition.

The QCAA also takes the opportunity to recommend the addition of two core principles to the ICAO Core Principles for Consumer Protection which is considered a "live-document".

Action: The Assembly is invited to request that ICAO, through the ATRP and the Council, adopts the below mentioned recommendations on the different subjects addressed in this Working Paper.

<i>Strategic Objectives:</i>	This working paper relates to Strategic Objective D — <i>Economic development of air transport</i>
<i>Financial implications:</i>	Not applicable
<i>References:</i>	Not applicable

1. INTRODUCTION

1.1 At the 38th ICAO Assembly, the Council was requested, among other things, “to develop and adopt a long-term vision for international air transport liberalization, including examination of an international agreement by which States could liberalize market access...”, “to develop a specific international agreement to facilitate further liberalization of air cargo services,” and “to initiate work on the development of an international agreement to liberalize air carrier ownership and control”.

1.2 ICAO’s Air Transport Regulation Panel (ATRP) has been working on the implementation of the 38th Assembly resolution, and most notably the development of the above mentioned international agreements. After holding a number of meetings and establishing working groups to conduct specific tasks as needed, the Members of the ATRP reached preliminary agreements on provisions of an administrative and technical nature.

1.3 However, discussions are still ongoing on key issues such as market access, safeguard provisions, the nature of the agreements, among others. The QCAA is aware that these discussions will be conducted throughout 2016 and 2017, and will then be presented to the Air Transport Committee and the Council for consideration after which Member States will be consulted on the draft text of the agreements, prior to their finalization.

2. DISCUSSION

2.1 Nature of the Multilateral Agreement on Liberalization

2.1.1 The QCAA understands that the ATRP is looking at two options regarding the nature of a multilateral liberalization agreement. Either to develop an agreement that is comprehensive and can substitute current bilateral agreements between States (some of which would eventually join this multilateral agreement), or to develop a supplemental agreement to the existing body of bilateral agreements and by which certain provisions in those bilateral agreements would be amended.

2.1.2 While both options could possibly lead to the anticipated objective of this exercise, having a supplemental agreement to the bilateral agreements rather than a comprehensive one would be more attractive to Member States. A supplemental agreement would secure the freedoms of traffic rights already agreed bilaterally between States. Such a supplemental regime could potentially be more liberal than the multilateral agreement currently being developed at ICAO.

2.2 Levels of Market Access

2.2.1 There are discussions at the ATRP as to which levels of market access and commercial rights would need to be included in the multilateral air liberalization agreement. The purpose of the multilateral agreement should include 3rd and 4th freedoms, without any restrictions on the beyond traffic resulting from the 3rd and 4th freedoms (so-called 6th freedom traffic rights) for passenger services, and up to 7th freedom traffic rights for all-cargo services, and should be aspirational in its application. Further traffic rights for passenger services including the 5th freedom should remain optional between the concerned parties.

2.3 Ownership and Control of Airlines

2.3.1 The ATRP is considering the option of combining market access and air carrier ownership and control. On the air carrier ownership and control front, the ATRP is considering the option of having “the principal place of business’ and ‘effective regulatory control’ as terms that substitute designation based on nationality of the airlines.

2.3.2 We believe that there must be a clear demarcation between the two liberalization agreements as the issue of ownership and control of airlines faces more controversy in the current context where many States still prefer designation based on nationality of the airlines.

2.4 Safeguard Measures for Fair Competition

2.4.1 There are two groups of Members at the ATRP which diverge on whether to include (or not) safeguard measures for fair competition in the multilateral liberalization agreement.

2.4.2 The first group aims to include detailed measures on safeguards related to fair competition that include defining terms such as transparency, fair and equal opportunity, commercial freedom, non-discrimination, and non-compliance terms related to passengers’ rights, environment, safety, security and others. The second group of Members believes that existing mechanisms and guiding principles under ICAO on competition matters are enough material to be referred to in an international agreement.

2.4.3 It is our opinion that intensive global competition, the emergence of new airline business models, the growth of independent airlines with global networks, and the emergence of competing hubs has triggered some States to push for safeguards for fair competition in any fora available, be it bilateral or under the ICAO umbrella.

2.4.4 The agenda for safeguards has already been examined at the ATConf/6 and the ICAO 38th Assembly. However, the proposals put forward did not materialize into ICAO policies or recommendations due to the fact that there are marked differences between States in terms of their own historical development of the air transport sector (i.e. maturity of markets and levels of development of airlines from different markets, and the social and economic standards of different States). It must also be noted that ICAO has already provided sufficient guidance on competition for States to be guided by in their bilateral aviation relations.

2.4.5 In light of the above, safeguards should not be used as pre-conditions to hold consultations and shall not be imposed unilaterally without discussing with the other party. Parties shall be given the opportunity to discuss at the bilateral level. As such, we would recommend that safeguards discussions during bilateral talks look at the following:

- a) take into account the historical development of the air transport sector in each State (i.e. to look at the different levels of development of airlines among States in a way that opens the way for airlines in developing countries and non-mature markets a similar period of development to that already enjoyed by mature airlines in mature markets and developed economies);
- b) fair competition discussions need to be within the mind set of opening markets (i.e. not to discuss fair competition measures unless it is within opening market access);

- c) to have equality in granting traffic rights between the two States concerned;
- d) to include availability of slots and the ability of airports infrastructure to allow operating to those airports without discrimination; and
- e) fair competition discussions should aim at widening consumer options and improving on the quality of air services.

2.5 ICAO Principles on Consumer Protection

2.5.1 As the QCAA is currently in consultations with stakeholders for the development and adoption of a passengers' rights regulation in the State of Qatar, we find it essential to highlight that States need to be very attentive in order to avoid possible inconveniences to passengers that might result from requirements in the regulations.

2.5.2 We commend ICAO on the core principles developed for consumer protection, which were guidance in the development of our own regulation in the State of Qatar. However, as those principles can be considered a "live-document", we believe this is a major chance to incorporate additional principles that could prove beneficial as well for all ICAO Member States. For example, carriers should not be subject to multiple consumer protection regimes that put them in a position where they have to comply to more than one regime at the same time for the same claim and/or for force majeure. This situation adds to the legal uncertainty faced by carriers and makes compliance more burdensome.

2.5.3 We would also recommend that ICAO reinstates and reaffirms its principle on the importance of giving ample time for consultations with all relevant stakeholders before adopting regulations. There should also be a focus on the importance of specifying responsibilities of other stakeholders, other than airlines, including ATCs and airport operators.

3. CONCLUSION

3.1 The Assembly is kindly invited to request that ICAO, through the ATRP and the Council, adopt the above mentioned recommendations on the different subjects summarized as follows:

- a) the agreement on the liberalization of market access to be of a supplemental nature rather than comprehensive one;
- b) the agreement on the liberalization of market access should include 3rd and 4th freedoms, without any restrictions on the beyond traffic resulting from the 3rd and 4th freedoms (so-called 6th freedom traffic rights) for passenger services, and up to 7th freedom traffic rights for all-cargo services, and should be aspirational in its application. Further traffic rights for passenger services including the 5th freedom should remain optional between the concerned parties;
- c) to have a complete separation between the agreement on liberalization of market access and the agreement on liberalization of air carrier ownership and control of airlines;
- d) safeguards should not be imposed unilaterally or used as a pre-condition to hold consultations. Parties shall be given the opportunity to discuss the appropriate level

of safeguards while taking into consideration the five proposed principles, as stipulated in item 2.4 above; and

- e) while endorsing ICAO core principles on consumer protection, carriers shall not be liable under multiple legal regimes at the same time for the same claim and/or for force majeure because it adds to the compliance burden.

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