Revised Discussion Draft of a Multilateral Convention on Foreign Investment in Airlines

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Overview

- – Why liberalizing ownership and control is challenging
- – The special challenge of the nationality clause
- – The draft convention: a possible solution
- – Key changes since first discussion draft

Challenges to Liberalization of Ownership and Control

- National Defense
- Homeland Security
- Labor-Management Relations
- Effective Reciprocity
- Nationality Clauses in Bilateral Agreement

The Nationality Clause Impedes Cross-Border Investment in Airlines

Bilateral aviation agreements traditionally grant rights only to airlines "<u>substantially owned and effectively controlled</u>" by nationals of the parties

Foreign investment or management control can cost an airline the right to fly to other countries

Draft Convention Offers a Solution

- Parties waive nationality clauses in their bilateral agreements with selected partner countries
- Every country is eligible to become a Party
- Each Party chooses its partner countries and may change them
- Strong reciprocity standard
- No obligation to change laws on ownership and control of a Party's own airlines

Strong Reciprocity

- Each Party submits a list of countries it chooses as potential partners (Article 4(1)(a))
- The nationality clause is waived among three or more countries <u>only</u> when <u>each</u> country has listed <u>all</u> the others (Article 2(1))
- Strong reciprocity encourages Parties to submit long partner lists; avoids free riders

Example

- Countries A and B have a bilateral agreement
- Nationals of Country C own or control an airline of Country A
- Countries A, B and C are all Parties to the multilateral convention

Example - Reciprocity

... and Countries A, B and C <u>each</u> list <u>both</u> of the others:

<u>Partners of Country A</u>

B

C

<u>Partners of Country B</u>

A

C

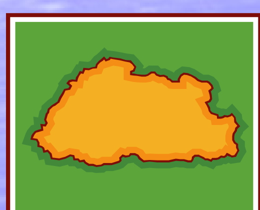
<u>Partners of Country C</u>

A

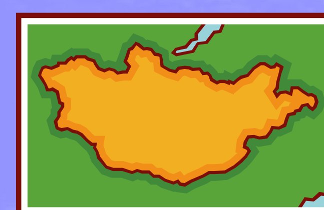
B

Reciprocity - Obligation

Country B must allow the airline to operate under the bilateral, even though the airline is owned by Country C nationals



Country B



Country A

Example – No Reciprocity

... but, if one country does not list both the others:

Partners of Country A

B

C

Partners of Country B

A

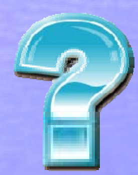
C

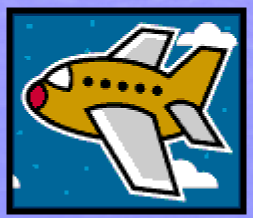
Partners of Country C

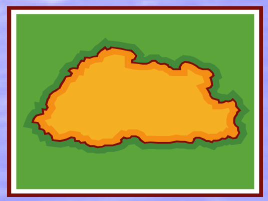
A

No Reciprocity - Discretion

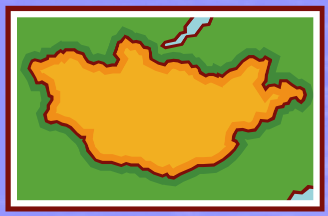
Country B has discretion to allow, or not allow, the airline owned by Country C nationals to operate under the bilateral







Country B



Country A

Key Changes to First Draft

- Meaning of “party”, “parties”, “Party” and “Parties” clarified
- Simplified option to waive nationality clause for all other Parties
- No separate dispute resolution mechanism
- EU suggestion: Option to allow foreign ownership and control of a Party’s own airlines

Allowing Foreign Ownership/Control?

For each country to decide

The Convention <u>does not require</u> a Party to change its domestic laws limiting or forbidding foreign ownership or control of its own airlines (Article 5)

EU suggestion: revised draft Convention gives a Party <u>the option</u> to allow foreign ownership and control of its airlines for a separate list of partner countries it selects (Article 3)

Discussion Draft – Input Sought

Questions?

Comments?

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