



**ICAN
2009**



**ICAO Air Services Negotiation Conference
28 September to 2 October 2009**

Istanbul, Turkey



Seminar Panel Discussion

Liberalization of Market Access

- ***ICAO's recommendations***
- ***Options to move forward***



ICAO's recommendations

- Multilateral exchange of traffic rights - a quest since 1944, remains an objective of ICAO (A36-15)
- ATConf/4: a general goal: gradual, progressive, orderly & safeguarded change towards market access
- ATconf/5: liberalization objective: create an operating environment for the industry to grow and prosper
 - States to liberalize market access to the extent feasible (re designated airlines, capacity, slots, code-sharing, alliance, other commercial freedoms)
 - accelerated liberalization of all cargo service
- Participation and safeguards



Options to move forward

- Liberalization - the way to go
- States to decide choice and pace (using national, bilateral, regional, or multilateral approaches)
- Optional clauses in ICAO TASAs
- Liberalization mass is building

Time to consider a global multilateral ASA?



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Liberalization of Air Carrier Ownership and Control

- Background
- ICAO's related work
- Options to move forward



Background

Used in ASA as a condition for airline designation and authorization

- A discretionary right for: designating State, and receiving State

Why use the “nationality” criteria?

- A convenient link between the airline and the designating State (economic & safety)
- Aim: to limit the economic benefits to the ASA parties & their airlines
- to identify line of responsibility for safety oversight



Liberalization: pros and cons

Benefits

- Wider access to capital
- Improved management/efficiency
- More commercial freedom
- Mergers & acquisition
“normal industry”?

Risks

- Flight of capital
- Flags of convenience
- Assurance of service – not guaranteed
- Consolidation/monopoly
Anti-competition?

States to weigh and decide



ICAO's extensive work

- 1983: “Community of interest” concept
- 1994: ATConf/4 recommended arrangement: “any party to an agreement, or to a predefined group”
- 1997: ATRP/9-4 recommendation: “principal place of business plus strong link”
- 2003: ATConf/5 model ASA clause: “principal place of business and effective regulatory control”



Challenges for Liberalization

- Why lack of progress globally
 - Retain discretionary control
 - Keep the negotiation leverage?
 - How to have States wanting to keep traditional criteria not to inhibit others from liberalizing



Ways to move forward

ATConf/5 conclusions and recommendation

- Existing ASA: apply flexibly, liberally
- Broadened criteria (ICAO model clause): wider use, building mass
- Positive actions by States:
 - individual statement of policy
 - joint statement of common policy
 - a binding legal instrument



Underlying issues

Link or De-link?

- The broader issue of market access
- Touching the original basis for States to exchange commercial rights

Are States willing to accept de-link?



Thank you!

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