ATConf/6-WP/104
20/3/13

WORLDWIDE AIR TRANSPORT CONFERENCE (ATCONF)

SIXTH MEETING

Montréal, 18 to 22 March 2013

AGENDA ITEM 2.2

The attached constitutes the report on Agenda Item 2.2 and should be inserted at the appropriate place in the yellow folder.

(5 pages)

Agenda Item 2: Examination of key issues and related regulatory framework
2.2: Air carrier ownership and control

2.2.1 DOCUMENTATION

2.2.1.1 The Conference considered Agenda Item 2.2 based on the following working papers: WP/12 (Secretariat), WP/94 (Brazil), WP/29 (Chile), WP/38 (Cuba), WP/41 (Egypt), WP/84 (Indonesia), WP/34 (New Zealand), WP/49 and WP/50 (Ireland on behalf of the European Union (EU) and its Member States and by other Member States of the European Civil Aviation Conference (ECAC)), WP/59 (22 Member States, Members of the Latin American Civil Aviation Commission (LACAC)), WP/63 (World Tourism Organization (UNWTO)), WP/67 (International Air Transport Association (IATA)), WP/81 (International Federation of Air Line Pilots' Associations (IFALPA)) and WP/99 (International Transport Workers' Federation (ITF)).

2.2.1.2 The following information paper was also noted by the Conference: IP/20 (AFCAC).

2.2.2 DISCUSSION

2.2.2.1 There was wide recognition of the benefits of liberalizing air carrier ownership and control, and the need to adapt the current regulatory regime to meet the needs of the 21st Century. It was also recognized that liberalization may have various implications for labour, which should continue to participate as an important stakeholder for the development of the air transport industry. There was general endorsement that ICAO is the appropriate forum by which to promote and facilitate further liberalization in this area.

2.2.2.2 There was virtually unanimous support for ICAO to take the lead and initiate work to develop an international agreement to facilitate liberalization of air carrier ownership and control, building on past achievements and experiences. In light of the disparity in States' needs and circumstances, the agreement could be for signature by "willing and ready" parties initially and open for accession by other parties subsequently. There was broad agreement that such work should take into consideration the importance of ensuring safety and security, the principle of reciprocity, and the need for safeguards to allow a gradual and progressive adaptation. It was acknowledged that this work should also take account of regional liberalization experiences, the rules under various States' domestic laws, and the effects on all stakeholders, including labour.

2.2.2.3 The Conference noted the distinction drawn between a State's decision with respect to the ownership and control requirement of its national airlines under domestic law, and the discretion of a State to maintain or remove restrictions on ownership and control of designated airlines of other States under bilateral air service agreements.

2.2.2.4 There was also broad support for encouraging States to continue to liberalize air carrier ownership and control through various existing measures, including that of adopting the alternative criteria for designation of airlines based on "principal place of business and effective regulatory control", as recommended by ICAO. In addition, many States expressed support for ICAO work required to update guidance in this area as necessary.

2.2.3 CONCLUSION

2.2.3.1 As a result of the documentation considered and ensuing discussion under Agenda Item 2.2, the Conference concluded that:

a) since ATConf/5, States and the industry have continuously called for liberalization of air carrier ownership and control in order to adapt to an ever more global and competitive economic environment. Although diverging views and regulatory approaches remain, there has been increasing recognition of the benefits of liberalization;

b) more States are willing to liberalize and adopt a flexible approach in dealing with airline designation requirements under bilateral air service agreements. Considerable progress has also been achieved at the regional level, as several regions or sub-regions adopted arrangements in liberalizing air carrier ownership and control among their respective members, including permitting cross-border investments and airline mergers;

c) there was general agreement that each State may choose its own path and pace in liberalization of air carrier ownership and control, and that safety and security remain of paramount importance in any regulatory change. Due consideration should also be given to the interest of all stakeholders, including that of labor. States have used various means in the liberalization of air carrier ownership and control, including unilateral, bilateral, regional, plurilateral and multilateral approaches;

d) ICAO has developed considerable guidance for use by States in liberalization of air carrier ownership and control, which needs to be kept current and responsive to changes and to the requirements of States;

e) there is broad and strong support for ICAO to continue to play a leadership role in facilitating further liberalization and in modernizing the global regulatory framework, including the development of a multilateral agreement to facilitate liberalization of air carrier ownership and control in order to meet the changing economic environment and requirements of States for the efficient and sustainable development of air transport; and

f) ICAO should work with concerned parties and aviation stakeholders in developing new regulatory frameworks. Before a new long-term regulatory regime is in place, States could consider some short-term options proposed during the Conference for liberalization, for example waiver of ownership and control restrictions in bilateral air services agreements.

2.2.4 RECOMMENDATION

Recommendation 2.2/1 — Air carrier ownership and control

The Conference Recommends that:

a) States should continue to liberalize air carrier ownership and control, according to needs and circumstances, through various existing measures, such as waiver of ownership and control restrictions in bilateral air services agreements, and those recommended by ICAO. Regional organizations should, in cooperation with ICAO, play a role in facilitating and assisting States in the liberalization process;

b) ICAO should continue to promote its policy guidance on air carrier ownership and control and encourage States to use its guidance in regulatory practice. It should keep its policy guidance current and responsive to changing situations and to the requirements of States; where required, ICAO should study and develop guidance on important issues that may arise as liberalization progresses;

c) ICAO should initiate work on the development of an international agreement to liberalize air carrier ownership and control, taking into consideration safety and security concerns, the principle of reciprocity, the need to allow a gradual and progressive adaptation with safeguards, the need to take account of regional experiences, the requirements of various States' domestic laws, and the effects on all stakeholders, including labour;

d) ICAO should involve all parties concerned in the development of the international agreement, and should undertake consultation with experts, States, aviation stakeholders and interested organizations.

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