



WORKING PAPER

WORLDWIDE AIR TRANSPORT CONFERENCE (ATCONF)

SIXTH MEETING

Montréal, 18 to 22 March 2013

Agenda Item 2: Examination of key issues and related regulatory framework

Agenda Item 2.4: Fair competition

VIEWS OF ARAB STATES ON FAIR COMPETITION

(Presented by the United Arab Emirates on behalf of a group of Arab States²)

EXECUTIVE SUMMARY

This working paper examines issues related to fair competition and concludes that the existing mechanisms and templates developed by ICAO adequately serve the purpose of ensuring fair competition without any need to develop further principles and instruments.

Action: The Conference is invited to agree to the recommendations presented in paragraph 6.

References: ATConf/6 reference material is available at www.icao.int/meetings/atconf6.

1. INTRODUCTION

1.1 The increasing liberalisation of international air services since the Fifth Worldwide Air Transport Conference (ATConf/5), intensive competition, the growth of independent airlines with global networks and the emergence of alternate competing hubs which provide seamless travel and benefits to consumers, have encouraged some States to propose a review and expansion of existing fair competition frameworks.

1.2 Meanwhile, differences among the member States in terms of the level of economic development, regulatory framework and differences in their airlines' business models continue to exist.

1.3 One common objective that should prevail through all ensuing debates on fair competition is the ability to provide efficient services to consumers and shippers in terms of increased product choices, enhanced connectivity and better value for money.

¹ Arabic version provided by the United Arab Emirates.

² Algeria, Bahrain, Egypt, Iraq, Jordan, Lebanon, Libya, Mauritania, Morocco, Kingdom of Saudi Arabia, Sudan, Oman, Palestine, Qatar, Tunisia, United Arab Emirates, Yemen.

2. RECENT DEVELOPMENTS

2.1 The European Regional Seminar of the European Civil Aviation Commission (ECAC) on 14 November 2012 suggested the adoption by ICAO of basic principles for open and fair competition and related policy instruments.

2.2 The most recent development to this are the conclusions adopted by the Council of the European Union (EU) on 20 December 2012. These conclusions recognized that the EU aviation sector and EU airlines are facing difficult challenges in a highly competitive global aviation market and, inter alia, concluded that ATConf/6 presents an opportunity for pursuing a “level playing field” through a new framework for fair competition.

3. ICAO WORK

3.1 Article 15 of the ICAO Template Air Services Agreement (TASA) addresses “Fair Competition” and provides traditional, transitional and full liberalization versions of provisions relating to fair competition. The transitional version specifically provides that each Party can take action to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of a designated airline of the other Party.

3.2 Article 18 of the ICAO TASA addresses “Safeguards” and lists various airline practices that may be regarded as possible unfair competitive practices which merit closer examination. These practices include, inter alia, charging fares which are insufficient to cover the costs of providing services and the addition of excessive capacity or frequency of services.

3.3 These apart, Article 19 of the TASA contain extensive provisions on “Competition Laws” to pave the way for their effective oversight and enforcement.

3.4 ICAO has also developed sufficiently adequate recommendations and guidance material for the oversight and enforcement of safeguards to ensure fair competition.

4. DISCUSSION

4.1 As ICAO already has developed well-articulated bilateral air services agreement templates on “fair competition”, “safeguards” and “competition laws” these, taken together, provide an adequate set of principles to support the progressive liberalization of international air services on the basis of fair and equal opportunities to compete.

4.2 States have the option to use these provisions, particularly the safeguard provisions, in their Air Services Agreements (ASAs) to address any concerns regarding unfair competitive practices which could adversely impact their designated airlines.

4.3 Introduction of any additional instruments to ensure a so called “level playing field” would pre-suppose a common understanding on what constitutes a level playing field when none exists internationally or across the aviation industry. ICAO also recognizes that a consensus is unlikely in view of the wide differences in the circumstances of their States and their aviation sectors. Any additional instruments could, therefore, potentially lead to conflicts in interpretation and application, and act as a deterrent to the unfettered growth of air transport and also negatively impact the global economy which aviation drives.

4.4 Many States have enacted laws on issues that impact fair competition, which are applicable to foreign air carriers operating to/from their territory, irrespective of the provisions of their ASA with other States. The tools for the effective enforcement of such laws to ensure fair competition already exist with these States, independent of developments through ICAO and independent of whether provisions exist in the ASA.

4.5 The issue of additional safeguards to ensure fair competition would be more relevant in the context of full liberalization of market access, and ideally needs to be considered through a multilateral comprehensive open aviation agreement in which adequate safeguards could be built in to protect the designated airlines of one country from the effects of unfair competition.

5. CONCLUSIONS

5.1 We strongly advocate open, free, undistorted and fair competition in the provision of international air transport and stand fully committed to the elimination of all forms of anti-competitive or predatory practices.

5.2 To this end, the existing mechanisms and templates developed by ICAO adequately serve the purpose of ensuring fair competition without any need to develop further principles and instruments with consequent additional costs and administrative burden on the Secretariat.

5.3 We strongly believe that ATConf/6 is the ideal forum to instead promote liberalization of international air transport and support the full use of ICAO's resources to further discourage channels for aero political restrictions on market access which remain the greatest threat to open, free, undistorted and fair competition.

5.4 Finally, we request ICAO to reinforce the principle that States should avoid unilateral actions and urge Member States to avoid "remedies" that are unilaterally imposed or implemented in matters related to fair competition and traffic rights.

6. RECOMMENDATIONS

6.1 The Conference is invited to:

- a) adopt recommendations a), b), c) and d) in ATConf/6-WP/4;
- b) agree that no further action is required with regard to recommendations e) and f) of ATConf/6-WP/4, for the reasons stated in paragraph 5 above.

— END —