



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 2.1 : Market access

LIBERALIZATION OF MARKET ACCESS

(Presented by Ireland on behalf of the European Union (EU) and its Member States¹ and other Member States of the European Civil Aviation Conference² (ECAC))

EXECUTIVE SUMMARY

This working paper:

- a) considers EU/ECAC experience with air transport liberalization;
- b) identifies arguments for liberalization and likely barriers;
- c) proposes an ambitious “vision” for liberalization of market access on a global scale; and
- d) reflects on potential strategies for moving towards this long-term vision.

Action: The Conference is invited to note EU/ECAC experience with air transport liberalization and to agree to the recommendations presented in paragraph 6.

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

1. WHY LIBERALISE?

1.1 Liberalization of market access in air transport can generate business opportunities for industry and competition for the supply of goods and services – potentially delivering jobs and growth and ultimately resulting in cost and quality benefits for consumers. With this in mind, and subject to measures that help ensure open and fair competition, we favour, and urge ICAO to actively promote, the on-going liberalization of international air transport.

¹ Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

² Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Georgia, Iceland, the Republic of Moldova, Monaco, Montenegro, Norway, San Marino, Serbia, Switzerland, The former Yugoslav Republic of Macedonia, Turkey and Ukraine.

1.2 EU/ECAC Member States have extensive experience of air transport liberalization. The EU single market for air transport - in effect embracing not only the 27 EU Member States, but also a number of other ECAC Member States - has fuelled significant growth in air transport within Europe, creating new jobs and delivering more choice and better value for consumers. EU/ECAC Member States continue to explore means of further improving efficiency, competition and quality within the single market - for example, through their work to develop a Single European Sky. The working paper on EU and ECAC industry and regulatory developments (ATConf/6-WP/53) outlines EU/ECAC experience with air transport liberalization in more detail.

1.3 Looking beyond its single market for air transport, the EU has pioneered a multilateral approach to liberalization through:

- a) "Horizontal" air transport agreements designed to align Member States' various bilateral Air Services Agreements (ASAs) with EU law and to extend access to the traffic rights available in those ASAs to all EU air carriers ("EU designation"), and
- b) "Comprehensive" air transport agreements which replace individual ASAs with a single, all-embracing, liberal, agreement between the EU as a whole and the partner country in question. Comprehensive agreements with key aviation partners such as the US and Canada are already in place. Where comprehensive agreements are agreed with neighbouring countries, a key long-term objective is to establish a wider "Common Aviation Area" involving the EU and its neighbours.

1.4 Growth in markets covered by Comprehensive Agreements between the EU, its Member States and partner countries has been significant - again, the Working Paper on EU and ECAC industry and regulatory developments (ATConf/6-WP/53) provides more information.

2. CRITERIA FOR AGREEING TO LIBERALIZATION

2.1 The EU single market is underpinned by a common regulatory regime designed, amongst other things, to deliver market access and ensure that air carriers can compete on an open, non-discriminatory and fair basis. Against this background, when negotiating comprehensive agreements with partner countries including other ECAC Member States, the EU and its Member States seek also regulatory convergence and insists on safeguards for open and fair competition as a condition for agreeing additional traffic rights.

2.2 The EU/ECAC Working Paper "Basic principles of fair competition" (ATConf/6-WP/51) proposes a set of high-level fair competition principles which would support further liberalization of market access by helping to ensure open and fair competition.

3. HOW MIGHT WE BREAK DOWN BARRIERS TO LIBERALIZATION?

3.1 Barriers to market access can constrain supply and stifle competition and innovation to the detriment of consumers, the aviation industry and the economy at large. ICAO should now resolve to break down such barriers.

3.2 There are many motives why access remains constrained in a lot of markets. For example, some countries are resistant to liberalization because they fear it might undermine their

“national carrier's” market position; others have yet to embrace the notion of a free market economy or are still hamstrung by antiquated regulatory requirements such as tariff filing. For EU/ECAC Member States, liberalization of market access is closely linked with measures to ensure fair competition. Even in countries which might be expected to adopt a “liberal” stance, it does not always follow that potential benefits are perceived in the same way. For example, whilst it could be argued that the pursuit of consumer benefits is a good reason to seek liberalization of market access, the interest of a State in guaranteeing a sustainable, reliable, diversified route network and in creating job opportunities might conflict with the interest of a single customer to fly the cheapest way on a single, specific route.

4. STRATEGY

4.1 This paper proposes that ICAO should adopt an ambitious, long-term “vision” for market access liberalization on a global scale. By identifying and agreeing an ultimate end objective (even one that is highly aspirational and many years away), ICAO Member States would give themselves a focus for their bilateral, multilateral and plurilateral ASA negotiations over the coming years. The EU and its Member States have pioneered this sort of approach by negotiating comprehensive air transport agreements with neighbouring countries with a view to, ultimately, stitching them together to establish a wider “Common Aviation Area” in Europe.

4.2 A relatively low-key, bottom up, incremental approach might provide the most widely palatable route to such a vision. Waiving restrictive nationality clauses in bilateral air services agreements or, in the longer term, a global agreement on air carrier ownership and control could be helpful as explored in EU/ECAC Working Paper "Air carrier ownership and control clauses in bilateral air services agreements" (ATConf/6-WP/49) and in EU/ECAC Working Paper "National restrictions on air carrier ownership and control" (ATConf/6-WP/50) Similarly, basic, universally accepted principles for open and fair competition could help pave the way for wider liberalization (as explored in EU/ECAC Working Paper "Basic principles of fair competition" (ATConf/6-WP/51) leading ultimately to a multilateral or plurilateral agreement on traffic rights being developed through ICAO.

5. CONCLUSIONS

5.1 In light of the discussions above, the following may be concluded:

- a) liberalisation of market access has the potential to promote competition, maximise business opportunities and deliver choice and value for money for consumers. However, at the same time, steps need to be taken to ensure open and fair competition. Measures may also be required to enable States, if they need to, to facilitate public service obligations for routes that are not necessarily commercially viable in their own right;
- b) a global approach to market access liberalisation will require a paradigm shift. This will not happen overnight. For instance, some countries need time to move away from protectionist tendencies, others will need to reconsider State aids that provide their air carriers with an unfair competitive advantage. More discussions are required, starting at ATConf/6, in order to better understand why different States take the positions they do and what needs to change in order to encourage them to embrace liberalisation. However, to help provide a focus for deliberations and an eventual target for the "bottom-up", incremental approach referred to above, this paper

proposes the following long-term "vision" for liberalisation of market access on a global scale:

“Barriers to market access stifle supply, competition and innovation to the detriment of consumers, industry and the economy at large. Similarly, consumers, industry and the economy suffer from unfair competitive practices. With this in mind, and whilst also promoting measures to ensure fair competition, we favour, and actively promote, the on-going liberalization of international air transport. Furthermore, we resolve to adopt a sustainable, step-by-step approach to liberalization on a global scale.”

6. **RECOMMENDATIONS**

6.1 The Conference is invited to:

- a) adopt a long-term, aspirational "vision" for market access – for instance along the lines proposed above; and
- b) encourage ICAO to identify and promote specific policies and initiatives designed to facilitate a move, from the bottom up, towards this shared, long-term vision of liberalization of market access.

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