



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

**POTENTIAL FOR DEVELOPING A MULTILATERAL AGREEMENT ON THE
LIBERALISATION OF INTERNATIONAL AIR TRANSPORT**

(Presented by the United Arab Emirates)

EXECUTIVE SUMMARY

This working paper examines the bilateral system in relation to the state of development of the air transport industry and supports ICAO in assuming a leadership role in developing an appropriate multilateral agreement to facilitate further liberalization of market access.

Action: The Conference is invited to agree to the recommendations presented in paragraph 5.

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

1. INTRODUCTION

1.1 As noted by the Secretariat in ATConf/6-WP/13, “expanded market access is fundamental to the development of the global air transport system,” with market access restrictions remaining “a major barrier ... to securing maximum benefits from the aviation sector for States and citizens.” These restrictions on market access have become embedded in the thousands of separate bilateral air services agreements between States.

1.2 Liberalised air transport provides a crucial conduit for tourism, trade and economic prosperity. An effective multilateral approach to liberalisation would enhance these benefits on a wider scale to all countries involved. Therefore the time has come to begin moving beyond the existing fractured system to a comprehensive multilateral agreement that opens markets, promotes vigorous and fair competition, and provides an inherently global industry with an appropriate global regulatory framework. Recent Secretariat survey results also showed that some 85 per cent of responding member countries favoured ICAO pursuing efforts on this front. Consequently, it is recommended that ICAO be

¹ Arabic version provided by the United Arab Emirates.

asked to assume a leadership role in developing such a multilateral approach to facilitate market access expansion.

2. BACKGROUND

2.1 It has been estimated that the rights of airlines to operate international air services are governed by over three thousand separate air services agreements between States. Although there are similarities among some agreements, the fact remains that these bilateral accords often contain a range of substantial limitations on the number of airlines that are allowed to operate, on the number of flights they are allowed to operate, on the cities and airports they may serve, on the routes they may fly, on the aircraft they may use, and on the fares and tariffs they are allowed to charge. Air services agreements—or annexes to the agreements—are frequently renegotiated, often on a season-to-season basis, to accommodate the changing needs of each side’s airlines, a practice that makes long-term route and fleet development difficult, if not impossible.

2.2 This bilateral system evolved after the failure of majority of participants at the 1944 Chicago Convention to endorse the so-called “Five Freedoms Agreement” that was prepared in conjunction with the Convention on International Civil Aviation and the International Air Services Transit Agreement. The bilateral air service agreements that were then negotiated by pairs of States may have met the needs of the industry and travellers at a time when flying was affordable only to a privileged few. Such agreements, however, are less relevant in an era in which air transportation is global in nature and serves hundreds of millions, of the world’s inhabitants.

3. DISCUSSION

3.1 A number of States have sought through open skies and other liberal arrangements to overcome restrictions found in traditional air services accords. Although these States are to be commended for abolishing anti-consumer and anti-competitive barriers, the fractured nature of the legal framework remains a serious impediment to the ability of aviation to reach its full potential in providing extensive and affordable air services on a global basis.

3.2 The increasing number of open skies and similarly liberal air services agreements suggests a growing consensus among States in support of liberalization. Countries such as Chile, New Zealand, Singapore, the United States and the UAE, to name a few, are prepared to negotiate liberal agreements with virtually all partner States and have been advocating for consideration of a liberal multilateral agreement.

3.3 The UAE believes that a liberal multilateral agreement would need to be based on a common commitment of participating States to the principle of open market access and to primary reliance on competitive forces (not government regulation) to deliver maximum economic value for citizens and communities. As the Secretariat has wisely noted, a liberal multilateral agreement could best be designed for signature by States “willing and ready” to participate immediately while remaining open for subsequent accession by other States when they deem the needs and circumstances to permit.

4. CONCLUSION

4.1 There should be no illusion that the development of a multilateral agreement will be an easy task. The wide variation in substantive provisions and legal texts employed in the thousands of

existing bilateral air services agreements makes clear the challenge that lies before the international aviation community. It would be wrong, however, to ignore the vast long-term benefits resulting from taking on this challenge. The citizens of ICAO member States should not see concrete work delayed until the next Air Transport Conference, which could lie many years in the future.

5. **RECOMMENDATIONS**

5.1 The following recommendations are proposed for consideration of the Conference:

- a) ICAO should assume a leadership role in developing an appropriate multilateral agreement to facilitate further liberalization of market access; and
- b) ICAO should pursue this objective in close consultation with States and by drawing on the extensive experience with previous attempts at multilateral liberalisation, open skies and similarly liberal air services agreements, as well as on the views and recommendations of experts in governments, the aviation industry and academia.

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