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**Agenda Item 39: Economic Regulation of International Air Transport — Policy**

**PERSPECTIVES ON ICAO'S MULTILATERAL AGREEMENT  
TO LIBERALIZE MARKET ACCESS**

(Presented by Brazil, Chile, New Zealand and Singapore)

**REVISION NO. 1**

**EXECUTIVE SUMMARY**

This paper advocates for the proposed ICAO multilateral agreement to liberalize market access to encompass an exchange of not only 3rd and 4th but also at least 5th freedom traffic rights. This is in line with ICAO's long-term vision toward air services liberalization.

**Action:** Considering the benefits of a liberalized air transport market to aviation stakeholders and the wider economy as well as consumers, the Assembly is invited to recognize the benefits of an ambitious scope for the proposed ICAO multilateral agreement that encompasses an exchange of not only 3rd and 4th, but also at least 5th freedom traffic rights.

<i>Strategic Objectives:</i>	This working paper relates to Strategic Objective D — <i>Economic Development of Air Transport</i>
<i>Financial implications:</i>	No financial implications.
<i>References:</i>	Doc 10022, <i>Assembly Resolutions in Force (as of 4 October 2013)</i> A39-WP/4, <i>Implementation of recommendations of the ICAO Sixth Worldwide Air Transport Conference (ATConf/6) (long-term vision and core principles on consumer protection)</i> A39-WP/5, <i>Progress report on the development of international agreements on the liberalization of market access, air cargo and air carrier ownership and control</i> State letter SP 38/1–15/54, dated 15 July 2015

## 1. INTRODUCTION

1.1 The 38th ICAO Assembly has requested the ICAO Council to develop an international agreement by which States could liberalize market access. A Working Group of the Air Transport Regulation Panel (ATRP) has been formed to develop the text for the agreement. The draft text is expected to be finalized by end-2016 or early-2017, for discussion at the next ATRP meeting in June 2017. One of the issues being discussed is whether the agreement should include (i) 3rd and 4th freedom traffic rights only; or (ii) at least 3rd, 4th, and 5th freedom traffic rights<sup>1</sup>.

## 2. BENEFITS OF AN AMBITIOUS MULTILATERAL AGREEMENT TO LIBERALIZE MARKET ACCESS

2.1 The co-sponsors of this paper share the view that the proposed multilateral agreement should be ambitious in scope, i.e. a liberal agreement with the exchange of at least 3rd, 4th, and 5th freedom traffic rights for passenger and cargo services. This is in line with the ICAO vision to actively pursue continuous air transport liberalization for the benefit of all stakeholders and the economy at large,<sup>2</sup> and the consensus to build on past achievements and existing liberalized regulatory arrangements. The Medellin Statement on Tourism and Air Transport for Development, issued in September 2015 by ICAO and the World Tourism Organization, also recognized the importance of continuous liberalization of air services to improve competitiveness, increase foreign direct investment, and accelerate economic development. With many States having already exchanged liberal 3rd and 4th freedom traffic rights under existing bilateral and regional multilateral agreements, there is value in taking the next step forward under a global agreement—to consider a liberal agreement with the exchange of at least 5th freedom traffic rights.

### 2.2 BENEFITS TO ECONOMIES

2.2.1 A liberal multilateral agreement with the exchange of at least 5th freedom traffic rights would help increase air connectivity, enabling wider economic benefits through increased investment, tourism, trade, and employment. This would also encourage innovation and business efficiency, and allow companies to attract high-quality employees.<sup>3</sup> A study commissioned by IATA has estimated that liberalizing just 320 bilateral air services agreements (out of the existing thousands) into open skies agreements would create 24.1 million full-time jobs and generate an additional US\$490 billion in Gross Domestic Product.<sup>4</sup>

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<sup>1</sup> ICAO Doc 9626 “Manual on the Regulation of International Air Transport” defines 5<sup>th</sup> freedom traffic rights as “the right or privilege, in respect of scheduled international air services, granted by one State to another State to put down and to take on, in the territory of the first State, traffic coming from or destined to a third State”. Opinions have been expressed that fifth freedom traffic rights are important as a balance for the right of transporting traffic between a second and third State, via the home State of the carrier.

<sup>2</sup> In May 2015, the ICAO Council adopted a long-term vision for international air transport liberalisation, to serve as a reference point and inspirational guide for Member States in their pursuit of the ultimate goal of liberalisation:

“We, the Member States of the International Civil Aviation Organization, resolve to actively pursue the continuous liberalisation of international air transport to the benefit of all stakeholders and the economy at large. We will be guided by the need to ensure respect for the highest levels of safety and security and the principle of fair and equal opportunity for all States and their stakeholders.”

<sup>3</sup> Air Transport Action Group. “Aviation: Benefits without Borders.” 2014.

<sup>4</sup> InterVISTAS-ga<sup>2</sup>. “The Economic Impact of Air Service Liberalization.” 2006.

2.2.2 A liberal agreement would also enable the growth of airports and airlines. Airlines are able to tap on new routes to expand their global networks, while airports benefit from increased traffic and more flight options for airport users such as passengers. Countries which signed open skies agreements experienced 17% higher growth in traffic five years after signing, with more than a third of this growth accounted for by growth in new routes.<sup>5</sup> The growth in air services also creates more employment opportunities, including for pilots and cabin crew. Allowing carriers to exercise 5th freedom traffic rights or more on some sectors would also increase the diversity of airlines serving the market, providing consumers with greater choice.

### 2.3 BENEFITS TO THE INTERNATIONAL AIR TRANSPORT REGULATION FRAMEWORK

2.3.1 A multilateral agreement which includes the exchange of at least 5th freedom traffic rights would help to reduce the complexity of the international air services agreement system. With the 191 ICAO Member States potentially having more than 18,000 different bilateral agreements,<sup>6</sup> a global agreement would help reduce administrative burden and regulatory uncertainty for airlines. However, such an agreement would only be effective in doing so if the traffic rights exchanged are over and above those already in effect. Otherwise, if existing bilateral or multilateral arrangements were more liberal, these would remain in place, adding to—rather than reducing—the complexity of the international framework.

2.3.2 It is desirable that the liberalisation of airline ownership and control and the liberalization of market access, in particular 5th freedom traffic rights, progress together. Liberalizing both together avoids incentives for airlines to circumvent 5th freedom traffic rights restrictions by a State through investing in or setting up an airline in that State.

## 3. CONSIDERATION OF CONCERNS

3.1 The co-sponsors of this paper understand that some States may be concerned with the impact on their carriers of exchanging 5th freedom traffic rights or more under a liberal multilateral agreement. The increased competition from liberalization could affect carriers negatively in the short term. However, it could also spur carriers to become more competitive, resulting in higher service standards and more competitive airfares for consumers. This will drive greater air travel demand, increasing the overall market size and bringing about other benefits to the wider economy, for example through tourism growth. Hence, the increased competition from liberalization need not come at the expense of home carriers. For example, with the liberalization through the Australia-New Zealand open skies agreement, the dominant incumbent carriers Air New Zealand and Qantas grew their traffic, and generally maintained their market position.<sup>7</sup>

3.2 Some States have expressed the view that air services liberalization should take into consideration the need for fair and equal opportunity for airlines to compete, and that governments should continue to have a role in a liberalized environment to prevent anti-competitive behaviours. This is being discussed further at the ICAO ATRP as part of the work on the proposed ICAO multilateral agreement on market access.

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<sup>5</sup> Cristea, Hummels, and Roberson. “Estimating the Gains from Liberalizing Services Trade: The Case of Passenger Aviation.” 2014.

<sup>6</sup> With Country A signing agreements with 190 other countries and Country B signing agreements with the 189 remaining countries, the possible number of bilateral agreements is  $190 + 189 + \dots + 2 + 1 = 18,145$  agreements.

<sup>7</sup> InterVISTAS. “The Economic Impacts of Air Service Liberalization.” 2015.

3.3 The co-sponsors of this paper recognize that States may wish to maintain flexibility to liberalize at a pace and in a manner appropriate to their needs and circumstances. Hence, we propose that there is no need for such States to sign on to the multilateral exchange of 5th freedom traffic rights or more immediately. States can choose to continue with the existing bilateral exchange of rights, signing on to the multilateral agreement only when they are ready.

#### 4. **CONCLUSION**

4.1 At its meeting held on 1-5 August in Colombo, Sri Lanka, the 53rd Conference of Directors General of Civil Aviation, Asia and Pacific Regions noted the benefits of an ambitious scope for the proposed ICAO multilateral agreement that encompasses an exchange of not only 3rd and 4th, but also 5th freedom traffic rights, and encouraged States to liberalize at a pace and in a manner appropriate to their needs and circumstances, considering the benefits of a liberalized air transport market.

4.2 Considering the benefits of a liberalized air transport market to aviation stakeholders and the wider economy as well as consumers, the Assembly is invited to recognize the benefits of an ambitious scope for the proposed ICAO multilateral agreement that encompasses an exchange of not only 3rd and 4th, but also at least 5th freedom traffic rights.

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