

Appendix 5

ICAO Template Air Services Agreements

This Appendix contains the texts of the bilateral and regional/plurilateral versions of the ICAO Template Air Services Agreements (TASAs). The TASAs are comprehensive framework air services agreements which include draft provisions on traditional, transitional and most liberal approaches, including optional wording, to the various elements in an air services agreement. The wording is based on model clauses or language developed by ICAO over the years on various air services agreement articles such as capacity, tariffs, competition laws, “doing business” and safety and aviation security provisions. The other source for the language in the provisions of the TASA is the practice and usage of States in their agreements; the text for most of the provisions therefore represents a distillation of the most common and current usage by States in this field.

The format of the TASA is arranged in two columns. The left column sets out the actual text of an Article or Annex in the agreement, including, if applicable, the different options and approaches (traditional, transitional and full liberalization). The various options (such as an alternative wording or provision within an article) provided within any approach, in particular the transitional approach, are not presented in any order of progression or priority. The right column includes the Explanatory Notes that are either specific to the provision or to the article in general and which provide information on the use of a particular approach. Most of the bilateral provisions have been adapted for regional or plurilateral use by a change of wording. However, the regional/plurilateral version includes also a number of Articles that contain issues only relevant in a regional or plurilateral context, for example, Article 36 (Exceptions).

The 2003 fifth Worldwide Air Transport Conference (ATConf/5) gave widespread support for the concept and contents of the TASA, its optional use by States in their air services relationships and its further development over time by ICAO as “living documents”. This ability to choose different approaches for different provisions in a TASA would allow States to shape agreements which best fit their own pace and path for changes in market access and other aspects of liberalization. In addition, it could help them identify potential areas and formulae for liberalization by comparing their existing agreements with the TASA. This template will continue to be developed, particularly regarding additional material as to its application, in order to provide comprehensive guidance to States to facilitate liberalization and improve the harmonization of air services agreements in terms of language and approach.

As ICAO guidance material, the TASAs are also made available in CD-ROM form, which includes a basic search engine to facilitate usage as well as each of the traditional, transitional and full liberalization approaches, in English, of the bilateral TASA in MS Word format. This will enable users to download and tailor the wording and options in the TASA to their specific needs and circumstances, particularly when preparing for air service agreements negotiations or developing their own liberalization approaches. The CD-ROM may be ordered (Order No. CD - 104) through the ICAO Document Sales Unit (Telephone: +1-514-954-8022; Fax: +1-514-954-6769; E-mail: sales@icao.int).

BILATERAL TEMPLATE AIR SERVICES AGREEMENT

Throughout this document:

- 1) an asterisk is used to indicate that a specific provision within an article is common to each of the traditional, transitional and full liberalization approaches. No asterisk appears if the whole article applies to all three approaches. However in some articles, such as “Designation and authorization”, the provision is reproduced in full for each approach for purposes of readability and clarity of the Article;*
- 2) in an article which provides for more than one approach, i.e. traditional, transitional, full liberalization, the same sequential order of presentation is maintained down the page, for ease of readability;*
- 3) similarly, where there are options within an approach (for example, two options within the transitional approach) these are also provided separately, but not in any order of priority.*

Table of Contents

	<i>Page</i>
Preamble	3
Article 1 Definitions	5
Article 2 Grant of rights	7
Article 3 Designation and authorization	8
Article 4 Withholding, revocation and limitation of authorization	13
Article 5 Application of laws	16
Article 6 Direct transit	17
Article 7 Recognition of certificates	18
Article 8 Safety	19
Article 9 Aviation security	21
Article 10 Security of travel documents	23
Article 11 Inadmissible and undocumented passengers and deportees	24
Article 12 User charges	25
Article 13 Custom duties	27
Article 14 Taxation	29
Article 15 Fair competition	31
Article 16 Capacity	32
Article 17 Pricing (Tariffs)	36
Article 18 Safeguards	45
Article 19 Competition laws	46
Article 20 Currency conversion and remittance of earnings	48
Article 21 Sale and marketing of air service products	49
Article 22 Non-national personnel and access to local services	50
Article 23 Change of gauge	52
Article 24 Ground handling	55
Article 25 Codesharing/Cooperative arrangements	57
Article 26 Leasing	60
Article 27 Intermodal services	66
Article 28 Computer reservations systems (CRS)	67
Article 29 Ban on smoking	68
Article 30 Environmental protection	69
Article 31 Statistics	70
Article 32 Approval of schedules	71
Article 33 Consultations	72
Article 34 Settlement of disputes	73
Article 35 Amendments	81
Article 36 Multilateral agreements	82
Article 37 Termination	83
Article 38 Registration with ICAO	84
Article 39 Entry into force	85
 Annex I Route schedules	 86
Annex II Non-scheduled/Charter operations	89
Annex III Air cargo services	94
Annex IV Transitional measures	96
Annex V Essential Service and Tourism Development Routes	99

Preamble	
[Option 1 of 2] The Government of and the Government of hereinafter referred to as the “Parties”; Being parties to the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944; Desiring to contribute to the progress of international civil aviation; Desiring to conclude an agreement for the purpose of establishing and operating air services between and beyond their respective territories; Have agreed as follows: [Option 2 of 2] The Government of and the Government of.... (hereinafter, “the Parties”); Being Parties to the Convention on International Civil Aviation, opened for signature at Chicago on 7 December, 1944; Desiring to promote an international aviation system based on competition among airlines in the marketplace with minimum government interference and regulation; Desiring to facilitate the expansion of international air services opportunities; Recognising that efficient and competitive international air services enhance trade, the welfare of consumers, and economic growth;	<i>The initial part of the agreement presents the reason for entering into the agreement and declares that they have agreed to what will follow in subsequent parts of the agreement.</i> <i>This approach is common in more liberal agreements and the bracketed text is common to “open skies” agreements.</i>

Preamble (cont'd)	
[Option 2 of 2] (cont'd) Desiring to make it possible for airlines to offer the travelling and shipping public a variety of service options [at the lowest prices that are not discriminatory and do not represent abuse of a dominant position], and wishing to encourage individual airlines to develop and implement innovative and competitive prices; and Desiring to ensure the highest degree of safety and security in international air services and reaffirming their grave concern about acts or threats against the security of aircraft, which jeopardise the safety of persons or property, adversely affect the operation of air services, and undermine public confidence in the safety of civil aviation. Have agreed as follows:	

Article 1 Definitions	
For the purposes of this Agreement, unless otherwise stated, the term: a) “air transportation” means the public carriage by aircraft of passengers, baggage, cargo and mail, separately or in combination, for remuneration or hire; b) “aeronautical authorities” means, in the case of _ the _; in the case of _ the _ ; or in both cases any other authority or person empowered to perform the functions now exercised by the said authorities; c) “Agreement” means this Agreement, its Annex, and any amendments thereto; d) “capacity” is the amount(s) of services provided under the agreement, usually measured in the number of flights (frequencies) or seats or tons of cargo offered in a market (city pair, or country-to-country) or on a route during a specific period, such as daily, weekly, seasonally or annually; e) “Convention” means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, 1944, and includes any Annex adopted under Article 90 of that Convention, and any amendment of the Annexes or Convention under Articles 90 and 94, insofar as such Annexes and amendments have become effective for both Parties; f) “designated airline” means an airline which has been designated and authorized in accordance with Article _ of this Agreement; g) “domestic air transportation” is air transportation in which passengers, baggage, cargo and mail which are taken on board in a States territory are destined to another point in that same State’s territory; h) “ICAO” means the International Civil Aviation Organization;	<i>While the Parties to an air services agreement may choose to define any number of terms used in their agreement, for the purposes of clarity or in the event of any possible ambiguity, the foregoing are the terms that may be commonly found in a Definitions article.</i> <i>For “aeronautical authorities” the required insertions will depend on the prevailing administrative structures and arrangements in place in each Party.</i>

Article 1 Definitions (cont'd)	
i) “intermodal air transportation” means the public carriage by aircraft and by one or more surface modes of transport of passengers, baggage, cargo and mail, separately or in combination, for remuneration or hire; j) “international air transportation” is air transportation in which the passengers, baggage, cargo and mail which are taken on board in the territory of one State are destined to another State; k) “Party” is a State which has formally agreed to be bound by this agreement; l) [“price”] or [“tariff”] means any fare, rate or charge for the carriage of passengers, baggage and/or cargo (excluding mail) in air transportation (including any other mode of transportation in connection therewith) charged by airlines, including their agents, and the conditions governing the availability of such fare, rate or charge; m) “territory” in relation to a State [means the land areas and territorial waters adjacent thereto and the airspace above them under the sovereignty of that State] has the meaning assigned to it in Article 2 of the Convention; n) “user charges” means a charge made to airlines by the competent authorities, or permitted by them to be made, for the provision of airport property or facilities or of air navigation facilities, or aviation security facilities or services, including related services and facilities, for aircraft, their crews, passengers and cargo; and o) “air service”, “international air service”, “airline”, and “stop for non-traffic purposes”, have the meanings assigned to them in Article 96 of the Convention.	<i>Although the broader and more modern term “price” is used rather than “tariff”; the definition is essentially the same for both terms.</i> <i>For the term “territory” there are two possible ways to define it, one by reference to the definition of that word in Article 2 of the Convention, and the other spelling out the usual meaning attributed to it in international law and practice. Both are presented as alternative language.</i>

Article 2 Grant of rights	
1.* Each Party grants to the other Party the rights specified in this Agreement for the purpose of operating international air services on the routes specified in the Route Schedule. 2.* Subject to the provisions of this Agreement, the airline(s) designated by each Party shall enjoy the following rights: a)* the right to fly without landing across the territory of the other Party; b)* the right to make stops in the territory of the other Party for non-traffic purposes; Traditional c) the right to make stops at the point(s) on the route(s) specified in the Route Schedule to this Agreement for the purpose of taking on board and discharging international traffic in passengers, cargo and mail [separately or in combination]. Transitional and Full liberalization c) the rights otherwise specified in this Agreement. 3.* The airlines of each Party, other than those designated under Article (Designation) of this Agreement, shall also enjoy the rights specified in paragraphs 2 a) and b) of this Article. Traditional and Transitional 4. Nothing in paragraph 2 shall be deemed to confer on the designated airline(s) of one Party the privilege of taking on board, in the territory of the other Party, passengers, cargo and mail for remuneration and destined for another point in the territory of the other Party.	<i>The Grant of rights provision sets out both the traffic and non-traffic rights the Parties grant to each other and usually needs to be read in conjunction with a schedule or annex that sets out the routes, rights and any applicable conditions.</i> <i>The foregoing first two freedoms of the air, although included in multilateral agreements (for scheduled services, the International Air Services Transit Agreement (IASTA); for non-scheduled services, Article 5 of the Convention), are also commonly included in bilateral and regional/plurilateral agreements, either because some States may not be, or may cease to be, parties to the IASTA.</i> <i>This provision exchanges the other traffic rights on the basis of the Route schedule. It is not necessary to distinguish among the Third, Fourth and Fifth Freedoms in the Grant of rights Article since the Route schedule will establish the routes and points for which the specific freedoms apply. One phrase “separately or in combination” is bracketed as being optional since its insertion would enable the operation of all-cargo services. However, these could also be the subject of separate treatment and negotiation between the Parties, including specified routes.</i> <i>Traffic rights in liberal agreements are exchanged using this formulation, in particular, “open skies” agreements. The Route schedule will, by its presentation and wording, establish the various “freedoms of the air” as well as the routes which may specify points to be exchanged.</i> <i>The use of the term “airlines of each Party” includes both airlines which are designated and those which are not.</i> <i>A standard provision that excludes cabotage operations from the grant of rights. Under full liberalization where cabotage rights have been exchanged, this is usually covered in the context of the Route schedule.</i>

Article 3 Designation and authorization	
Traditional 1. Each Party shall have the right to designate in writing to the other Party an airline to operate the agreed services [in accordance with this Agreement] and to withdraw or alter such designation. 2.* On receipt of such a designation, and of application from the designated airline, in the form and manner prescribed for operating authorization [and technical permission], each Party shall grant the appropriate operating authorization with minimum procedural delay, provided that: a) substantial ownership and effective control are vested in the Party designating the airline, nationals of that Party, or both;	<i>The formulation of the Designation and authorization provision may be simplified by addressing the reasons in paragraph 2 for a State to receive an authorization in the Revocation of authorization Article, since the conditions for not granting an authorization are the same.</i> <i>The traditional approach refers to one airline or a single designation.</i> <i>The traditional “substantial ownership and effective control” formula is still used in the majority of bilateral agreements. The phrase is not defined and the authorizing Party is the sole judge of whether the ownership and control criteria have been met. Nevertheless, “substantial ownership” is broadly considered to mean more than 50 per cent equity ownership. On the other hand, States take varying views in their domestic legislation or practice as to what might constitute “effective control”. With the traditional clause, there have been individual instances where the authorizing Party has waived its right to require that the ownership and control criteria be met.</i> <i>For a Party which receives the designation, it would retain the discretionary right of refusal as a measure of control to address legitimate concerns if and when required. This provision addresses potential concerns such as safety, security or other economic aspects including potential emergence of “flags of convenience”.</i>

Article 3 Designation and authorization (cont'd)	
Traditional (cont'd) 3.* On receipt of the operating authorization of paragraph 2, a designated airline may at any time begin to operate the agreed services for which it is so designated, provided that the airline complies with the applicable provisions of this Agreement. Transitional 1. Each Party shall have the right to designate in writing to the other Party one or more airlines to operate the agreed services [in accordance with this Agreement] and to withdraw or alter such designation. 2. On receipt of such a designation, and of application from the designated airline, in the form and manner prescribed for operating authorization [and technical permission], each Party shall grant the appropriate operating authorization with minimum procedural delay, provided that: [Sub-paragraphs 2a) through 2 c) *, option 1 of 2] a) the airline is and remains substantially owned and effectively controlled by nationals of any one or more States in a group, or by any one or more of the Parties themselves;	<i>The transitional approach refers to one or more airlines or multiple designation. The phrasing was sometimes interpreted as being met by the designation of two airlines. The transitional approach also includes formulae for increasing the number of designated airlines on specific routes based on, for example, negotiated multi-year increases or the achievement of a specified level of passenger traffic in city-pair markets.</i> <i>This approach uses the recommendation of the 1994 World-wide Air Transport Conference (ATConf/4) which refers to an airline which is and remains substantially owned and effectively controlled by nationals of one or more States that are not necessarily party to the agreement concerned but are within a predefined group with a “community of interest”. A second group formulation by ATConf/4 is an airline which is substantially owned and effectively controlled by nationals of any one or more States that are parties to an agreement, or any one or more of the parties themselves. The definition of a European Union (EU) air carrier is an example of this ownership and control within a group (the EU criteria also includes principal place of business and administrative headquarters in a Member State).</i>

Article 3 Designation and authorization (cont'd)	
Transitional (cont'd) b)* the Party designating the airline is in compliance with the provisions set forth in Article _ (Safety) and Article _ (Aviation Security); and c)* the designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party receiving the designation. [Sub-paragraphs a) through d)*, option 2 of 2] a) the designated airline has its principal place of business (see (i) below) [and permanent residence] in the territory of the designating Party; b) the Party designating the airline has and maintains effective regulatory control (see (ii) below) of the airline; <i>Notes: —</i> (i) evidence of principal place of business includes such factors as: the airline is established and incorporated in the territory of the designating Party in accordance with relevant national laws and regulations, has a substantial amount of its operations and capital investment in physical facilities in the territory of the designating Party, pays income tax, registers and bases its aircraft there, and employs a significant number of nationals in managerial, technical and operational positions.	<i>In agreements where a reference is made to ownership by nationals within a group of States, for example, Member States within the European Union, the text would be modified to take into consideration any changes in the European Community legislation.</i> <i>This approach recommended by ICAO would enable a State to designate air carriers as it sees qualified (including those with majority national ownership) to use and benefit from its entitled market access rights under a bilateral agreement. At the same time, it would reinforce the obligation on the part of the designating party to maintain effective regulatory control (including safety and security oversight) over the airline it designates. Such control is envisioned primarily through licensing which can include both economic and operational elements. The arrangement would not require the State to change its existing laws, policies or regulations pertaining to national ownership and control of its own national air carrier(s), but would allow such change if and when the State wishes to do so.</i>

Article 3 Designation and authorization (cont'd)		
	Transitional (cont'd)	
[Sub-paragraphs a) through d) *, option 2 of 2] 3.* On receipt of the operating authorization of paragraph 2, a designated airline may at any time begin to operate the agreed services for which it is so designated, provided that the airline complies with the applicable provisions of this Agreement.		
Full liberalization		
1. Each Party shall have the right to designate in writing to the other Party as many airlines as it wishes to operate the agreed services [in accordance with this Agreement] and to withdraw or alter such designation. 2.* On receipt of such a designation, and of application from the designated airline, in the form and manner prescribed for operating authorization [and technical permission], each Party shall grant the appropriate operating authorization with minimum procedural delay, provided that: a) the airline is under the effective regulatory control of the designating State; b)* the Party designating the airline is in compliance with the provisions set forth in Article _ (Safety) and Article _ (Aviation Security); and c)* the designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party receiving the designation.		<i>The full liberalization approach refers to as many airlines or no quantitative limit on the number of airlines which can be designated.</i> <i>Full liberalization removes all criteria pertaining to the airline, but requires effective regulatory control by the designating State to ensure compliance with Safety and Security standards. It would also include a “right of establishment” that is a right for non-nationals to establish and operate an airline in the territory of a Party which could then engage in domestic and international air services.</i>

Article 3 Designation and authorization (cont'd)	
Full liberalization (cont'd) 3.* On receipt of the operating authorization of paragraph 2, a designated airline may at any time begin to operate the agreed services for which it is so designated, provided that the airline complies with the applicable provisions of this Agreement.	
Article 4 Withholding, revocation and limitation of authorization	
1.* The aeronautical authorities of each Party shall have the right to withhold the authorizations referred to in Article (Authorization) of this Agreement with respect to an airline designated by the other Party, and to revoke, suspend or impose conditions on such authorizations, temporarily or permanently: Traditional a) in the event that they are not satisfied that substantial ownership and effective control are vested in the Party designating the airline, nationals of that Party, or both; b)* in the event of failure of the Party designating the airline to comply with the provisions set forth in Article _ (Safety) and Article _ (Aviation Security); and c)* in the event of failure that such designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party receiving the designation.	<i>The reasons for a State that receives a request for an authorization to not authorize initially or to subsequently revoke, suspend or condition an authorization it has granted are the same. Consequently, if the criteria for designation requires such formulation as “substantial ownership and effective control” or “principal place of business”, then the failure to meet that requirement will be grounds for revocation, suspension or the imposition of conditions on the operating permission.</i> <i>Other bases for revocation are broader in scope and are covered by cross reference to the requirements to comply with the provisions on safety, security and the laws and regulations of that Party.</i>

Article 4 Withholding, revocation and limitation of authorization (cont'd)		
Transitional [Sub-paragraphs a) through c) *, option 1 of 2] a) in the event that they are not satisfied that the airline is and remains substantially owned and effectively controlled by nationals of any one or more States in a group, or by any one or more of the Parties themselves; b)* in the event of failure of the Party designating the airline to comply with the provisions set forth in Article _ (Safety) and Article _ (Aviation Security); and c)* in the event of failure that such designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party receiving the designation.		In agreements where a reference is made to ownership by nationals within a group of States, for example, Member States within the European Union, the text would be modified to take into consideration any changes in the European Common Law legislation.

Article 4 Withholding, revocation and limitation of authorization (cont'd)	
Transitional [Sub-paragraphs a) through d) [*], option 2 of 2] a) in the event that they are not satisfied that the designated airline has its principal place of business (see (i) below) [and permanent residence] in the territory of the designating Party; b) in the event that they are not satisfied that the Party designating the airline has and maintains effective regulatory control (see (ii) below) of the airline; <i>Notes: —</i> (i) evidence of principal place of business includes such factors as: the airline is established and incorporated in the territory of the designating Party in accordance with relevant national laws and regulations, has a substantial amount of its operations and capital investment in physical facilities in the territory of the designating Party, pays income tax, registers and bases its aircraft there, and employs a significant number of nationals in managerial , technical and operational positions.	

Article 4 Withholding, revocation and limitation of authorization (cont'd)	
Transitional [Sub-paragraphs a) through d)*, option 2 of 2 (cont'd)] <i>Notes (cont'd): —</i> (ii) evidence of effective regulatory control includes but is not limited to: the airline holds a valid operating licence or permit issued by the licensing authority such as an Air Operator Certificate (AOC), meets the criteria of the designating Party for the operation of international air services, such as proof of financial health, ability to meet public interest requirement, obligations for assurance of service; and the designating Party has and maintains safety and security oversight programmes in compliance with ICAO standards. c)* in the event of failure of the Party designating the airline to comply with the provisions set forth in Article _ (Safety) and Article _ (Aviation Security); and d)* in the event of failure that such designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party receiving the designation. Full liberalization a) in the event that they are not satisfied that the airline is under the effective regulatory control of the designating State; b)* in the event of failure of the Party designating the airline to comply with the provisions set forth in Article _ (Safety) and Article _ (Aviation Security); and c)* in the event of failure that such designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party receiving the designation.	

Article 4 Withholding, revocation and limitation of authorization (cont'd)		
Full liberalization	2.* Unless immediate action is essential to prevent infringement of the laws and regulations referred to above or unless safety or security requires action in accordance with the provisions of Articles (Safety) or (Security), the rights enumerated in paragraph 1 of this Article shall be exercised only after consultations between the aeronautical authorities in conformity with Article (Consultation) of this Agreement.	<i>Compliance with the laws and regulations as well as safety and security provisions is constrained in paragraph 2 by the need in the first instance for consultation.</i>
Article 5 Application of laws		
[Paragraph 1, option 1 of 2] 1. The laws and regulations of one Party governing entry into and departure from its territory of aircraft engaged in international air services, or the operation and navigation of such aircraft while within its territory, shall be applied to aircraft of the designated airline of the other Party. [Paragraph 1, option 2 of 2] 1. While entering, within, or leaving the territory of one Party, its laws and regulations relating to the operation and navigation of aircraft shall be complied with by the other Party's airlines.		<i>This Article is found in most bilateral agreements and reproduces the substance of Article 11 of the Convention. There is a general commitment by the Parties to use ICAO Standards and Recommended Practices (SARPs) concerning facilitation. The Article on "Inadmissible and undocumented passengers and deportees" contains a more specific commitment concerning Annex 9 procedures.</i> <i>Under the first alternative, paragraph 1 recognizes that a Party's laws with respect to the operation of aircraft and admission of passengers, crew, cargo and mail will be applied to the other Party's airlines.</i> <i>Under the second alternative, paragraph 1 shifts the emphasis to compliance by airlines with a Party's laws on operation and navigation of aircraft and the admission, transit and departure of passengers, crew, cargo and mail.</i>

Article 5 Application of laws (cont'd) [Paragraph 2, option 1 of 2]	
2. The laws and regulations of one Party relating to the entry into, stay in and departure from its territory of passengers, crew and cargo including mail such as those regarding immigration, customs, currency and health and quarantine shall apply to passengers, crew, cargo and mail carried by the aircraft of the designated airline of the other Party while they are within the said territory.	<i>Paragraph 2 focuses on the application of, which is to say, compliance with those laws and regulations related to customs, immigration, currency, health and quarantine of the other Party.</i>
[Paragraph 2, option 2 of 2] 2. While entering, within, or leaving the territory of one Party, its laws and regulations relating to the admission to or departure from its territory of passengers, crew or cargo on aircraft (including regulations relating to entry, clearance, aviation security, immigration, passports, customs and quarantine, or in the case of mail, postal regulations) shall be complied with by, or on behalf of, such passengers, crew or cargo of the other Party's airlines. 3.* Neither Party shall give preference to its own or any other airline over a designated airline of the other Party engaged in similar international air transportation in the application of its immigration, customs, quarantine and similar regulations.	<i>Paragraph 2 focuses on the application of, which is to say, compliance with those laws and regulations related to customs, immigration, currency, health and quarantine of the other Party.</i> <i>Paragraph 3 is common to both alternatives and addresses non-discrimination.</i>

Article 6 Direct transit	
[Option 1 of 2] Passengers, baggage, cargo and mail in direct transit shall be subject to no more than a simplified control. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes. [Option 2 of 2] Passengers, baggage and cargo in direct transit through the territory of any Party and not leaving the area of the airport reserved for such purpose shall not undergo any examination except for reasons of aviation security, narcotics control, prevention of illegal entry or in special circumstances.	<i>In some agreements, this provision could be stated separately or included in the Application of laws Article.</i> <i>Option 1 is a standard facilitation measure for simplified transit found in most air services agreements.</i> <i>Option 2, found in “open skies” agreements, addresses the security situation of transit traffic rather than the controls or customs and tax treatment.</i>
Article 7 Recognition of certificates	
1. Certificates of airworthiness, certificates of competency and licenses issued or rendered valid by one Party and still in force shall be recognized as valid by the other Party for the purpose of operating the agreed services provided that the requirements under which such certificates and licenses were issued or rendered valid are equal to or above the minimum standards which may be established pursuant to the Convention. 2. If the privileges or conditions of the licences or certificates referred to in paragraph 1 above, issued by the aeronautical authorities of one Party to any person or designated airline or in respect of an aircraft used in the operation of the agreed services, should permit a difference from the minimum standards established under the Convention, and which difference has been filed with the International Civil Aviation Organization, the other Party may request consultations between the aeronautical authorities with a view to clarifying the practice in question.	<i>This provision on Recognition of Certificates is found in most air service agreements even though, in essence, it simply reproduces in paragraphs 1 and 2 two provisions of the Convention, Articles 33 and 32 b) respectively, with some minor variations in wording.</i> <i>In paragraph 1, the Parties exchange mutual recognition of currently valid certificates of airworthiness and competency and licenses issued by the other Party.</i> <i>States may find it useful to have a procedure to deal with differences filed with respect to the standards established pursuant to the Convention.</i>

Article 7 Recognition of certificates (cont'd)	
3. Each Party reserves the right, however, to refuse to recognize for the purpose of flights above or landing within its own territory, certificates of competency and licenses granted to its own nationals by the other Party.	<i>This provision reserves the right to refuse to recognize any certificates or licenses issued by the other Party to the first Party's nationals. Drawn from Article 32 b) of the Convention, the provision is necessary because Article 32 a) requires pilots to be provided with licenses issued by the State of registry of the aircraft. Consequently, it is not possible for the recognition to extend to a license issued to that State's own nationals by another State.</i>
Article 8 Safety	
1. Each Party may request consultations at any time concerning the safety standards maintained by the other Party in areas relating to aeronautical facilities, flight crew, aircraft and the operation of aircraft. Such consultations shall take place within thirty days of that request. 2. If, following such consultations, one Party finds that the other Party does not effectively maintain and administer safety standards in the areas referred to in paragraph 1 that meet the Standards established at that time pursuant to the <i>Convention on International Civil Aviation</i> (Doc 7300), the other Party shall be informed of such findings and of the steps considered necessary to conform with the ICAO Standards. The other Party shall then take appropriate corrective action within an agreed time period.	<i>The foregoing model clause on safety developed by ICAO provides a standardized process for Parties to an agreement to address safety concerns. It is intended to ensure that aircraft operated by, or on behalf of, designated airlines in the other Party's territory are operated and maintained in accordance with ICAO Standards and Recommended Practices. The provision takes a wide view of an aircraft operation by including aeronautical facilities, which implies the provision of facilities such as air traffic control, airport and navigational aids, in addition to the aircraft and its crew.</i> <i>However, nothing prevents the Parties from inserting additional or more restrictive criteria that they feel may be necessary for assessing the safety of an aircraft operation, such as the alternative wording for ramp inspection which specifies the findings and determinations that can be made by aeronautical authorities following a ramp inspection, and additionally addresses the situation where there is a denial of access for a ramp inspection.</i>

Article 8 Safety (cont'd)	
3. Pursuant to Article 16 of the Convention, it is further agreed that, any aircraft operated by, or on behalf of an airline of one Party, on service to or from the territory of another Party, may, while within the territory of the other Party be the subject of a search by the authorized representatives of the other Party, provided this does not cause unreasonable delay in the operation of the aircraft. Notwithstanding the obligations mentioned in Article 33 of the Chicago Convention, the purpose of this search is to verify the validity of the relevant aircraft documentation, the licensing of its crew, and that the aircraft equipment and the condition of the aircraft conform to the Standards established at that time pursuant to the Convention. 4. When urgent action is essential to ensure the safety of an airline operation, each Party reserves the right to immediately suspend or vary the operating authorization of an airline or airlines of the other Party. 5. Any action by one Party in accordance with paragraph 4 above shall be discontinued once the basis for the taking of that action ceases to exist. 6. With reference to paragraph 2, if it is determined that one Party remains in non-compliance with ICAO Standards when the agreed time period has lapsed, the Secretary General of ICAO should be advised thereof. The latter should also be advised of the subsequent satisfactory resolution of the situation.	<i>Except for this provision, there is no specific reference to sanctions in the Safety Article in view of the possibility of taking action under the Revocation provision to revoke, suspend or impose conditions on a designated airlines authorization for failing to comply with, inter alia, the Safety Article.</i>

Article 9 Aviation security	
1. Consistent with their rights and obligations under international law, the Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Parties shall, in particular, act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970 and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971, its Supplementary Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on 24 February 1988 as well as with any other convention and protocol relating to the security of civil aviation which both Parties adhere to. 2. The Parties shall provide, upon request, all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation. 3. The Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by ICAO and designated as Annexes to the Convention; they shall require that operators of aircraft of their registry or operators of aircraft who have their principal place of business or permanent residence in their territory and the operators of airports in their territory act in conformity with such aviation security provisions. [Each Party shall advise the other Party of any difference between its national regulations and practices and the aviation security standards of the Annexes. Either Party may request immediate consultations with the other Party at any time to discuss any such differences.]	<i>The provision on aviation security was developed by ICAO. It incorporates by general reference, in paragraphs 1 and 3 respectively, obligations on aviation security arising from the various international instruments on unlawful interference to which the Parties may be signatories, and to Annex 17 on Aviation Security in the Convention, which applies to all Contracting States of ICAO. Any changes to the Standards and Recommended Practices of the latter which may come into effect subsequent to the adoption of the agreement would also apply to the Parties. The clause emphasizes mutual assistance in the prevention of unlawful seizure or other such acts, requests for special security measures and whenever there is an unlawful act or the threat of one. The clause does not limit the contractual freedom of Parties to expand or limit its scope or to use a different approach.</i> <i>The bracketed language in paragraph 3 provides a procedure for handling differences which could be filed for security standards.</i>

Article 9 Aviation security (cont'd)	
4. Each Party agrees that such operators of aircraft may be required to observe the aviation security provisions referred to in paragraph 3) above required by the other Party for entry into, departure from, or while within, the territory of that other Party. Each Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Party shall also give sympathetic consideration to any request from the other Party for reasonable special security measures to meet a particular threat. 5. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof. [6. Each Party shall have the right, within sixty (60) days following notice (or such shorter period as may be agreed between the aeronautical authorities), for its aeronautical authorities to conduct an assessment in the territory of the other Party of the security measures being carried out, or planned to be carried out, by aircraft operators in respect of flights arriving from, or departing to the territory of the first Party. The administrative arrangements for the conduct of such assessments shall be agreed between the aeronautical authorities and implemented without delay so as to ensure that assessments will be conducted expeditiously.]	<i>The alternative paragraphs 6 and 7 address, respectively, the inspection of security facilities and procedures in the other Party's territory and the need for prompt consultations on security matters (which have greater urgency than consultation on other issues) as well as the ability to take interim action when warranted.</i>

Article 9 Aviation security (cont'd)	
[7. When a Party has reasonable grounds to believe that the other Party has departed from the provisions of this Article, the first Party may request consultations. Such consultations shall start within fifteen (15) days of receipt of such a request from either Party. Failure to reach a satisfactory agreement within fifteen (15) days from the start of consultations shall constitute grounds for withholding, revoking, suspending or imposing conditions on the authorizations of the airline or airlines designated by the other Party. When justified by an emergency, or to prevent further non-compliance with the provisions of this Article, the first Party may take interim action at any time.]	
Article 10 Security of travel documents	
1. Each Party agrees to adopt measures to ensure the security of their passports and other travel documents. 2. In this regard, each Party agrees to establish controls on the lawful creation, issuance, verification and use of passports and other travel documents and identity documents issued by, or on behalf of, that Party. 3. Each Party also agrees to establish or improve procedures to ensure that travel and identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be unlawfully altered, replicated or issued. 4. Pursuant to the objectives above, each Party shall issue their passports and other travel documents in accordance with ICAO Doc 9303, <i>Machine Readable Travel Documents: Part 1 – Machine Readable Passports, Part 2 – Machine Readable Visas, and/or Part 3 – Size 1 and Size 2 Machine Readable Official Travel Documents.</i>	<i>ICAO's Machine Readable Travel Document's technical specifications, contained in ICAO Doc 9303, permit reliable verification of the authenticity of travel documents and their holders and provide strong safeguards against alteration, forgery or counterfeit. Nearly 100 Contracting States issue Machine Readable Passports and other Machine Readable Travel Documents, in accordance with the specifications in Doc 9303. ICAO's Resolutions recognize that Doc 9303's specifications not only are effective in accelerating the movement of international passengers and crew members through border control, they also enhance security and immigration compliance programmes. Resolutions of the United Nations (UN) Security Council and other bodies of the UN, call upon States to enhance international cooperation to combat the smuggling of aliens and to prevent the use of fraudulent documents.</i> <i>Inclusion of this Article in air services agreements would enhance international efforts, by States, against the use of fraudulent and counterfeit travel documents for illegal migration, the smuggling of migrants and the movement of terrorists or terrorist groups across borders.</i>

Article 10 Security of travel documents (cont'd)	
5. Each Party further agrees to exchange operational information regarding forged or counterfeit travel documents, and to cooperate with the other to strengthen resistance to travel document fraud, including the forgery or counterfeiting of travel documents, the use of forged or counterfeit travel documents, the use of valid travel documents by imposters, the misuse of authentic travel documents by rightful holders in furtherance of the commission of an offence, the use of expired or revoked travel documents, and the use of fraudulently obtained travel documents.	
Article 11 Inadmissible and undocumented passengers and deportees	
1. Each Party agrees to establish effective border controls. 2. In this regard, each Party agrees to implement the Standards and Recommended Practices of Annex 9 (Facilitation) to the Chicago Convention concerning inadmissible and undocumented passengers and deportees in order to enhance cooperation to combat illegal migration. 3. Pursuant to the objectives above, each Party agrees to issue, or to accept, as the case may be, the letter relating to “fraudulent, falsified or counterfeit travel documents or genuine documents presented by imposters” set out in Appendix 9 b) to Annex 9 (11th edition), when taking action under relevant paragraphs of Chapter 3 of the Annex regarding the seizure of fraudulent, falsified or counterfeit travel documents.	<i>Chapter 3 of Annex 9 (Facilitation) to the Chicago Convention includes Standards and Recommended Practices setting out general procedures to be followed by States and airlines when dealing with inadmissible passengers, undocumented passengers and deportees. Appendix 9 is intended to replace, as a travel document, fraudulent, falsified or counterfeit travel documents seized from passengers who have used them for travel. The idea behind existing paragraphs and Appendix 9 is to remove, from circulation, fraudulent, falsified and counterfeit documents.</i> <i>Inclusion of this Article in air services agreements would enhance international efforts, by States, against the smuggling of migrants and the movement of terrorists or terrorist groups across borders.</i>
Article 12 User charges	
	<i>These two alternative approaches to a provision on user charges differ significantly. Some provisions refer to “designated airlines”. Parties would need to consider whether the provisions on the activities contained in this Party should also be extended to all airlines of a Party rather than only designated ones.</i>

Article 12 User charges (cont'd)	
[Paragraphs 1 and 2, option 1 of 2] 1. Neither Party shall impose or permit to be imposed on the designated airlines of the other Party user charges higher than those imposed on its own airlines operating similar international services.	<i>This alternative is less detailed and merely reproduces in the first paragraph the non-discrimination principle governing user charges in Article 15 of the Convention viz. that charges on a foreign aircraft shall be no higher than those that would be imposed on its own aircraft in similar international operations.</i>
2. Each Party shall encourage consultations on user charges between its competent charging authority [or airport or air navigation service provider] and airlines using the service and facilities provided by those charging authorities [or service provider], where practicable through those airlines' representative organizations. Reasonable notice of any proposals for changes in user charges should be given to such users to enable them to express their views before changes are made. Each Party shall further encourage its competent charging authority [or service provider] and such users to exchange appropriate information concerning user charges.	<i>The provision encourages consultation between the charging authority and the users, that reasonable notice is given for any changes in charges and that appropriate information is exchanged concerning charges. These principles reflect ICAO policy on charges (Doc 9082). Because some States have commercialized or privatized their airport and air navigation service providers, and have delegated authority to set user charges, suitable wording in brackets is added to address such situations.</i>
[Paragraphs 1 and 2, option 2 of 2] 1. User charges that may be imposed by the competent charging authorities or bodies of each Party on the airlines of the other Party shall be just, reasonable, not unjustly discriminatory, and equitably apportioned among categories of users. In any event, any such user charges shall be assessed on the airlines of the other Party on terms not less favourable than the most favourable terms available to any other airline at the time the charges are assessed. 2. User charges imposed on the airlines of the other Party may reflect, but shall not exceed, the full cost to the competent charging authorities or bodies of providing the appropriate airport, airport environmental, air navigation, and aviation security facilities and services at the airport or within the airport system. Such full costs may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis.	<i>In the second alternative, this provision includes certain principles which again reflect ICAO-developed policy. However, rather than use the formula from Article 15 of the Convention, as is done in the first alternative, this version applies a type of "most favoured nation" provision which is broader in application than Article 15.</i> <i>Certain ICAO cost recovery principles are set out in this provision.</i>

Article 12 User charges (cont'd)	
[Paragraphs 1 and 2, option 2 of 2] (cont'd) 3. Each Party shall encourage consultations between the competent charging authorities or bodies in its territory and the airlines using the services and facilities, and shall encourage the competent authorities or bodies and the airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles in paragraphs 1 and 2. Each Party shall encourage the competent charging authorities to provide users with reasonable notice of any proposal for changes in user charges to enable users to express their views before changes are made. 4. Neither Party shall be held, in dispute resolution procedures pursuant to Article _ (Settlement of Disputes), to be in breach of a provision of this Article, unless: a) it fails to undertake a review of the charge or practice that is the subject of complaint by the other Party within a reasonable amount of time; or b) following such a review it fails to take all steps within its power to remedy any charge or practice that is inconsistent with this Article. [5. Airports, airways, air traffic control and air navigation services, aviation security, and other related facilities and services that are provided in the territory of one Party shall be available for use by the airlines of the other Party on terms no less favourable than the most favourable terms available to any airline engaged in similar international air services at the time arrangements for use are made.]	<i>There are similar requirements regarding consultations, exchange of information and reasonable notice as can be found in the first alternative.</i> <i>The second approach introduces a review process prior to any treatment of user charges within the dispute settlement framework, and indicates that there is no breach of the Article, for purposes of the dispute settlement mechanism, if that review process is undertaken.</i> <i>The bracketed language is essentially a more detailed version of Article 15 of the Convention.</i>

Article 13 Customs duties	
1. Each Party shall on the basis of reciprocity exempt a designated airline of the other Party to the fullest extent possible under its national law from [import restrictions,] customs duties, excise taxes, inspection fees and other national duties and charges [not based on the cost of services provided on arrival] on aircraft, fuel, lubricating oils, consumable technical supplies, spare parts including engines, regular aircraft equipment, aircraft stores and other items [such as printed ticket stock, air waybills, any printed material which bears the insignia of the company printed thereon and usual publicity material distributed free of charge by that designated airline] intended for use or used solely in connection with the operation or servicing of aircraft of the designated airline of such other Party operating the agreed services. 2. The exemptions granted by this article shall apply to the items referred to in paragraph 1: a) introduced into the territory of the Party by or on behalf of the designated airline of the other Party; b) retained on board aircraft of the designated airline of one Party upon arrival in or leaving the territory of the other Party; or c) taken on board aircraft of the designated airline of one Party in the territory of the other Party and intended for use in operating the agreed services; whether or not such items are used or consumed wholly within the territory of the Party granting the exemption, provided the ownership of such items is not transferred in the territory of the said Party.	<i>A provision on customs and other duties is to be found in nearly all air services agreements and supplements the exemption on fuel, lubricating oils, spare parts, regular equipment and aircraft stores retained on board on arrival in another State's territory, found in Article 24 of the Convention. It also reflects ICAO policies on the taxation of international air transport (Doc 8632). The purpose of the provision is to exempt international aviation operations from various customs duties and other taxes on fuel, spare parts, supplies and equipment, that would normally be applied to a foreign aircraft when operating in another jurisdiction. The nature of international air transport and the potentially adverse economic impact of such imposts have been the rationale for the almost global acceptance of this provision.</i> <i>It should be noted that there are different interpretations of what constitutes an international leg of a service, for example, as it applies to tariffs and customs duties exemptions. States may therefore seek to include a clarification to this effect in any air services agreement entered into, particularly where cabotage rights are exchanged. In such cases, exemptions provided by this Article would be modified to take into account the nature of the service and its compatibility with domestic laws.</i> <i>In some situations the exemption is not a blanket exemption from all taxes and charges and where, for instance, there are government imposed charges for services provided to international air transport (e.g. customs and quarantine fees), then the agreement would need a qualifying statement such as: "not based on the cost of services provided on arrival". Other items that could be covered (but have not been inserted in this Article) are equipment used for reservations and operations, security equipment, cargo loading and passenger-handling equipment, instructional material and training aids.</i>

Article 13 Customs duties (cont'd)	
3. The regular airborne equipment, as well as the materials and supplies normally retained on board the aircraft of a designated airline of either Party, may be unloaded in the territory of the other Party only with the approval of the customs authorities of that territory. In such case, they may be placed under the supervision of the said authorities up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.	
Article 14 Taxation	
[Paragraphs 1 through 3, option 1 of 2] 1. Profits from the operation of the aircraft of a designated airline in international traffic shall be taxable only in the territory of the Party in which the place of effective management of that airline is situated. 2. Capital represented by aircraft operated in international traffic by a designated airline and by movable property pertaining to the operation of such aircraft shall be taxable only in the territory of the Party in which the place of effective management of the airline is situated. 3. Where a special agreement for the avoidance of double taxation with respect to taxes on income and on capital exists between the Parties, the provisions of the latter shall prevail.	<i>A provision on the taxation of income and capital in agreements is not widespread, in part because such matters may be the subject of a separate treaty on double taxation between the parties. One is presented above in light of the policy of ICAO (Doc 8632) that such an exemption be granted. Since the issue of taxation and taxation agreements between States would be an issue for financial authorities, a provision such as is presented here would require the involvement of those authorities in its formulation and negotiation.</i> <i>In this alternative, paragraphs 1 and 2 address the taxation of income and capital respectively.</i> <i>Paragraph 3 provides for a treaty between the Parties on double taxation to override the provisions of this agreement.</i>

Article 14 Taxation (cont'd)	
[Paragraphs 1 through 3, option 2 of 2] 1. Profits or income from the operation of aircraft in international traffic derived by an airline of one Party, including participation in inter-airline commercial agreements or joint business ventures, shall be exempt from any tax on profits or income imposed by the Government of the other Party. 2. Capital and assets of an airline of one Party relating to the operation of aircraft in international traffic shall be exempt from all taxes on capital and assets imposed by the Government of the other Party. 3. Gains from the alienation of aircraft operated in international traffic and movable property pertaining to the operation of such aircraft which are received by an airline of one Party shall be exempt from any tax on gains imposed by the Government of the other Party. [4.* Each Party shall on a reciprocal basis grant relief from value added tax or similar indirect taxes on goods and services supplied to the airline designated by the other Party and used for the purposes of its operation of international air services. The tax relief may take the form of an exemption or a refund.]	<i>This alternative exempts airlines from certain taxes imposed by the Government of the other Party rather than specifying where airlines are taxable, i.e., in the territory of effective management of the airline, thereby clarifying the scope of tax exemptions.</i> <i>Paragraph 1 specifically exempts profits and income from inter-airline commercial agreements.</i> <i>The exemption is reciprocal though its coverage may vary as indicated by the bracketed text. For example, the Parties may also choose to include import restrictions, or airline supplies such as ticket stock, or computer equipment.</i>

Article 16 Capacity	
Traditional Predetermination 1. The total capacity to be provided on the agreed services by the designated airlines of the Parties shall be agreed between, or approved by, the aeronautical authorities of the Parties before the commencement of the operations, and thereafter according to anticipated traffic requirements. 2. The agreed services to be operated by the designated airlines of the Parties shall have as their primary objective the provision at reasonable load factors of capacity adequate to meet the traffic requirements between the territories of the two Parties. 3. Each Party shall allow fair and equal opportunity for the designated airlines of both Parties to operate the agreed services between their respective territories so as to achieve equality and mutual benefit, in principle by equal sharing of the total capacity between the Parties. 4. Each Party and its designated airline(s) shall take into consideration the interests of the other Party and its designated airline(s) so as not to affect unduly the services which the latter provides.	<i>The model clauses for Predetermination, Bermuda I and full liberalization methods of capacity determination were developed by ICAO in the early 1980s to encompass the principal regulatory approaches by States to the determination of the capacity offered by their designated airlines. Extensive guidance on the application and objectives of each of these methods is set out in the Policy and Guidance Material on the Economic Regulation of International Air Transport (Doc 9587).</i> <i>Each designated airline may offer capacity based on predetermination where both Parties, or all designated airlines with government approval, agree jointly, in advance, on the total capacity to be offered on each route; increases require approval of both Parties.</i> <i>In terms of the number of bilateral agreements, the traditional and most widely used method of capacity regulation is predetermination. The requirement for mutual government and airline agreement ensures that a Party can require that the designated airlines of both Parties offer the same amount of capacity on all routes, and that both governments must agree on any change in the capacity offered. Some flexibility is provided by the practice of Parties individually approving “extra sections” (flights in addition to those regularly scheduled), for example, during holiday periods when demand increases sharply but temporarily. A more formal approach is for the Parties, after agreement has been reached on basic entitlements to capacity, to agree on temporary increases which would not, however, constitute a change in capacity entitlements.</i>

Article 16 Capacity (cont'd)	
Traditional (cont'd) Predetermination (cont'd) 5. If, on review, the Parties fail to agree on the capacity to be provided on the agreed services, the capacity that may be provided by the designated airlines of the Parties shall not exceed the total capacity (including seasonal variations) previously agreed to be provided. Transitional Bermuda I [see alternatively, “Partial liberalization and predetermined increase” below] 1. The air transport facilities available to the travelling public should bear a close relationship to the requirements of the public for such transport. 2. The designated airline or airlines of each Party shall have a fair and equal opportunity to [compete] [operate] on any agreed route between the territories of the two Parties. 3. Each Party shall take into consideration the interests of the airlines of the other Party so as not to affect unduly their opportunity to offer the services covered by this Agreement.	<i>Each designated airline may offer capacity based on Bermuda I where airlines determine capacity individually, based on qualitative criteria and subject to ex post facto review by the Parties.</i> <i>In the Bermuda I type method of capacity regulation, the Parties adopt the capacity principles for airlines to follow, but then allow each airline the freedom to determine, in conformity with these principles, its own capacity based on airline analysis of market requirements. The capacity operated on the agreed routes is subject to ex post facto review by aeronautical authorities through their consultations. The Parties continued agreement on the principles on which capacity is to be determined as well as the effective functioning of the ex post facto review mechanism is critical to the successful functioning of this method.</i>

Article 16 Capacity (cont'd)		
Transitional (cont'd) Bermuda I [see alternatively, “Partial liberalization and predetermined increase” below] (cont'd)		
4. Services provided by a designated airline under this Agreement shall retain as their primary objective the provision of capacity adequate to the traffic demands between the country of which such airline is a national and the country of ultimate destination of the traffic. The right to embark or disembark on such services international traffic destined for and coming from third countries at a point or points on the routes specified in this Agreement shall be exercised in accordance with the general principles of orderly development of international air transport to which both Parties subscribe and shall be subject to the general principle that capacity should be related to: a) the traffic requirements between the country of origin and the countries of ultimate destination of the traffic; b) the requirements of through airline operations; and c) the traffic requirements of the area through which the airline passes, after taking account of local and regional services. 5. Consultations between the Parties shall be arranged whenever a Party requests that the capacity provided under the Agreement be reviewed to ensure the application of the principles in the Agreement governing the conduct of the services.		

Article 16 Capacity (cont'd)	
Transitional Bermuda I (cont'd) Partial liberalization and predetermined increases [see alternatively, “Bermuda I” above] Full liberalization	<i>Each designated airline may offer capacity based on partial liberalization and predetermined increases where Parties agree not to regulate capacity on certain services or routes and/or on one of several formulae for individual airlines to increase capacity on a regular basis. Additional flexibility for airlines to determine capacity falls into two general categories: 1) partial liberalization - allowing airlines to freely and individually determine their own capacity in certain markets or for certain services and 2) predetermined increases - agreement on formulae or schedules for future capacity increases.</i> <i>Examples of Partial liberalization include no capacity restrictions on: 1) all-cargo services; 2) non-scheduled passenger services to points not served by scheduled airlines; and 3) scheduled services to points not being served under existing agreements, including aircraft size limitation, but no limitation on the number of frequencies which could be operated.</i> <i>Examples of Predetermined increases include: 1) varying the percentages of capacity between the designated airlines on a route from 50-50 to 60-40; 2) agreed annual increases in the number of seats offered by individual airlines in city-pair markets; and 3) negotiated capacity increases over a multi-year period. Transitions are frequently negotiated as part of an “open skies” agreement.</i> <i>Some agreements do not require a separate article on Capacity but make a reference to it in the Route schedule.</i>

Article 16 Capacity (cont'd)	
Free determination 1. Each Party shall allow each designated airline to determine the frequency and capacity of the international air transportation it offers based on commercial considerations of the marketplace. 2. Neither Party shall unilaterally limit the volume of traffic, frequency, or regularity of service, or the aircraft type or types operated by the designated airlines of the other Party, except as may be required for customs, technical, operational, or environmental reasons under uniform conditions consistent with Article 15 of the Convention. 3. Neither Party shall impose on the other Party's designated airlines a first refusal requirement, uplift ratio, no-objection fee, or any other requirement with respect to the capacity, frequency or traffic which would be inconsistent with the purposes of this Agreement. 4. Neither Party shall require the filing of schedules, programmes for charter flights, or operational plans by airlines of the other Party for approval, except as may be required on a non-discriminatory basis to enforce uniform conditions as foreseen by paragraph 2) of this Article or as may be specifically authorized in an Annex to this Agreement. If a Party requires filings for information purposes, it shall minimize the administrative burdens of filing requirements and procedures on air transportation intermediaries and on designated airlines of the other Party.	<i>Each designated airline may offer capacity based on free determination where individual airlines determine capacity to be offered without government approval or intervention, subject to competition law(s).</i> <i>In the Free determination method typically found in "open skies" agreements and arrangements, the parties agree to abrogate their direct bilateral control of capacity while retaining the ability to apply non-discriminatory, multilateral controls consistent with the Convention.</i> <i>No specific provision on the relationship between capacity and demand is contained in the Free determination method, the competitive pricing and scheduling responses of airlines to market forces being relied on to bring about necessary adjustment. This mechanism may work less effectively where the free play of market forces is impaired or inhibited.</i> <i>The Free determination method normally proscribes all forms of discrimination or unfair competitive practices, including predatory pricing, such practices being the cause for possible consultation and remedy. The provision on safeguards for unfair competitive practices addresses this additional and complimentary procedure.</i> <i>Given the wide latitude accorded designated airlines on the capacity they may offer and in view of the increased potential for anti-competitive actions such as "capacity dumping", the full liberalization approach should be subject to intervention on the basis of the competition laws of the Parties.</i>

Article 17 Pricing (Tariffs)	
Traditional Double approval 1. The tariffs to be applied by the designated airline or airlines of a Party for services covered by this Agreement shall be established at reasonable levels, due regard being paid to all relevant factors, including interests of users, cost of operation, characteristics of service, reasonable profit, tariffs of other airlines and other commercial considerations in the market-place. [Paragraph 2, option 1 of 3] 2. The tariffs shall, wherever possible, be agreed by the designated airlines concerned of both Parties, after discussion as required with their respective governments and, if applicable, consultation with other airlines. Such agreement shall, wherever possible, be reached by the use of the appropriate international tariff coordination mechanism. Failing any multilateral or bilateral agreement, each designated airline may develop tariffs individually.	<i>ICAO has developed extensive guidance on all aspects of international fares and rates. Additional detailed explanatory notes on the usage and application of these provisions can be found in Doc 9587. Hybrid approaches are possible with the traditional and transitional approaches, where for example one regulatory approach is chosen for normal tariffs and another for promotional. The provisions are therefore capable of being used in a flexible manner with appropriate elements being selected from each approach as required.</i> <i>The definition of a “tariff” or “pricing” is included in the article on definitions.</i> <i>The traditional double approval model remains the most common (in terms of the number of bilateral agreements) approach for establishing tariffs. A degree of liberalization can be provided under this approach if both Parties allow designated airlines wide latitude in the tariffs they are prepared to approve, or if they agree to approve certain tariffs, such as those meeting the criteria of a zone-pricing regime.</i> <i>Parties may need to agree on which factors should be included or emphasized.</i> <i>The mechanism for developing tariffs includes two other options which would place progressively less emphasis on the need for a multilateral or bilateral airline agreement. Airlines may participate, under the auspices of the International Air Transport Association (IATA), in tariff coordination for the purpose of interlining, subject to government approval and conditions.</i>

Article 17 Pricing (Tariffs) (cont'd)	
Traditional/Double Approval (cont'd) [Paragraph 2, option 2 of 3] 2. The tariffs may be agreed by the designated airlines concerned of both Parties, after consultation, if applicable, with other airlines. Such agreement may be reached by the use of the appropriate international tariff coordination mechanism. However, neither Party shall make participation in multilateral carrier tariff coordination a condition for approval of any tariff nor shall either Party prevent or require participation by the designated airline(s) of either Party in such multilateral tariff coordination. Each designated airline may, at its option, develop tariffs individually. [Paragraph 2, option 3 of 3] 2. The tariffs shall, wherever possible, be established by the designated airlines individually. However, tariffs may be agreed by the designated airlines of the Parties if both Parties permit designated airlines to participate in the activities of the appropriate international tariff coordination mechanism(s). Any tariff agreement resulting from such activities shall be subject to the approval of each Party, and may be disapproved at any time whether or not previously approved. 3. Each Party may require notification or filing of tariffs proposed by the designated airline(s) [of the other Party] [of both Parties] for carriage to or from its territory. Such notification or filing may be required not more than _ days before the proposed date of introduction. In special cases, this period may be reduced.	<i>In recognition of the need to streamline filing procedures, the provision expresses the period for filing as a maximum period, with the number of days left blank (usually 30) and to be settled by the Parties according to the circumstances prevailing for the bilateral in question.</i>

Article 17 Pricing (Tariffs) (cont'd)	
Traditional/Double Approval (cont'd) [Paragraph 2, option 3 of 3 (cont'd)] 4. The tariffs to be charged by the designated airlines of the Parties for carriage between their territories shall be subject to the approval of both Parties. [The tariffs to be charged by a designated airline of one Party for carriage between the territory of the other Party and that of a third State on services covered by this agreement shall be subject to the approval requirements of the other Party.] 5. Approval of tariffs consequent upon the provisions of Paragraph 4 above may be given expressly by either Party to the airline(s) filing the tariffs. However, if a Party has not given in writing to the other Party [and [or] the airline(s) concerned] notice of disapproval of such tariffs of the airline(s) of the other Party within _ days from the date of submission, the tariffs concerned shall be considered approved. In the event of the period of submission being reduced in accordance with Paragraph 3, the Parties may agree that the period within which any disapproval shall be given be reduced accordingly. No tariff shall come into force if either Party has given notice of disapproval [except as provided in Paragraph 6 below]. 6. Each Party may request consultation regarding any tariff of an airline of either Party for services covered by this Agreement, including where the tariff concerned has been subject to a notice of disapproval. Such consultations shall be held not later than _ days after receipt of the request. The Parties shall cooperate in securing information necessary for reasoned resolution of the issues. If the Parties reach agreement, each Party shall use its best efforts to put that agreement into effect. If no agreement is reached any decision to disapprove a tariff shall prevail.	<i>Unlike the filing requirements, which can be far reaching, the scope of approval falls primarily on tariffs for third and fourth freedom services which are completely within the regulatory ambit of the two Parties. It also incorporates an option to address tariffs for third party carriage.</i> <i>With regard to the alternative procedures of express and tacit approval, the provision recognizes the need for streamlining the handling of tariff submissions and emphasizes the latter approach. As with the filing period, the period within which any disapproval must be notified has been left blank (usually 15 days for a 30 day filing/notification), to be settled by the Parties according to their particular bilateral circumstances.</i> <i>This is a provision for a specific consultative process to be invoked under the bilateral regulation of tariffs, without limiting the circumstance under which it applies. In each case the time scale for holding such consultation is left blank to be settled by the Parties according to their particular circumstances.</i>

Article 17 Pricing (Tariffs) (cont'd)	
Traditional/Double Approval (cont'd) [Paragraph 2, option 3 of 3 (cont'd)] 7. [If the Parties cannot resolve an issue with respect to the tariffs mentioned in Paragraph 4, the dispute shall be settled in accordance with the provisions of Article _ of this Agreement.] 8. A tariff established in accordance with the provisions of this clause shall remain in force, unless withdrawn by the airline(s) concerned or until a new tariff has been approved. [However a tariff shall not be prolonged for more than _ months after the date on which it otherwise would have expired unless approved by the Parties. Where a tariff has been approved without an expiry date and where no new tariff has been filed and approved, that tariff shall remain in force until either of the Parties gives notice terminating its approval on its own initiative or at the request of the airline(s) concerned. Such termination shall not take place with less than _ days notice.] 9. [The Parties shall endeavour to ensure that active and effective machinery exists within their jurisdictions to investigate violations by any airline, passenger or freight agent, tour organizer, or freight forwarder, of tariffs established in accordance with this Article. They shall furthermore ensure that the violation of such tariffs is punishable by deterrent measures on a consistent and non-discriminatory basis.] Transitional Country of origin	<i>The optional text presents the traditional arbitration procedure for the settlement of disputes when the consultation process has failed to resolve an issue between the Parties.</i> <i>The text on the duration of established tariffs covers such circumstances as a withdrawal of the tariffs by the airline(s) concerned, or a disapproval (of a previously approved tariff) by one or both of the Parties. Prolongation beyond the expiry date is subject to the applicable approval regime and may be limited to 12 months.</i> <i>A provision on tariff enforcement is included on an optional basis.</i> <i>The country of origin tariffs approach forms a middle ground between double approval, the most widely adopted method of regulating tariffs, and the dual disapproval, where the Parties concerned have no unilateral powers of intervention in tariffs.</i>

Article 17 Pricing (Tariffs) (cont'd)	
[Paragraph 3, option 3 of 3] 3. The tariffs shall, wherever possible, be established by the designated airlines individually. However, tariffs may be agreed by the designated airlines of the Parties if both Parties permit designated airlines to participate in the activities of the appropriate international tariff coordination mechanism(s). Any tariff agreement resulting from such activities shall be subject to the approval of each Party, and may be disapproved at any time whether or not previously approved. 4. Each Party may require notification or filing of tariffs proposed by the designated airline(s) [of the other Party] [of both Parties] for carriage to or from its territory. Such notification or filing may be required not more than _ days before the proposed date of introduction. In special cases, this period may be reduced. 5. Each Party shall have the right to approve or disapprove tariffs for one-way or round-trip carriage between the territories of the two Parties which commences in its own territory. [The tariffs to be charged by a designated airline of one Party for carriage between the territory of the other Party and that of a third State on services covered by this agreement shall be subject to the approval requirements of the other Party.] Neither Party shall take unilateral action to prevent the inauguration of proposed tariffs or the continuation of effective tariffs for one-way or round-trip carriage between the territories of the two Parties commencing in the territory of the other Party. 6. Approval of tariffs consequent upon the provisions of Paragraph 5 above may be given expressly by either Party to the airline(s) filing the tariffs. However, if the Party concerned has not given in writing to the other Party [and [or] the airline(s) concerned] notice of disapproval of such tariffs of the airline(s) of the other Party within _ days from the date of submission, the tariffs concerned shall be considered approved. In the event of the period of submission being reduced in accordance with Paragraph 4, the Parties may agree that the period within which any disapproval shall be given be reduced accordingly.	<i>In recognition of the need to streamline filing procedures, the provision expresses the period for filing as a maximum period, with the number of days left blank (usually 30) and to be settled by the Parties according to the circumstances prevailing for the bilateral in question.</i> <i>Unlike the filing requirements, which can be far reaching, the scope of approval falls primarily on tariffs for third and fourth freedom services which are completely within the regulatory ambit of the two Parties. The country of origin approach forms a middle ground between double approval, the most widely adopted method of regulating tariffs, and the dual disapproval, where the Parties concerned have no unilateral powers of intervention in tariffs. The approval paragraph also incorporates an option to address tariffs for third party carriage.</i> <i>The filing period, the period within which any disapproval must be notified has been left blank (usually 15 days for a 30 day filing/notification), to be settled by the Parties according to their particular bilateral circumstances.</i>

Article 17 Pricing (Tariffs) (cont'd)	
[Paragraph 3, option 3 of 3] 7. Where either Party believes that a tariff for carriage to its territory falls within the categories described in Paragraph 2 above, such Party shall give notice of dissatisfaction to the other Party [as soon as possible and at least] within _ days of the date of notification or filing of the tariff, and may avail itself of the consultation procedures set out in Paragraph 8 below.	
Article 17 Pricing (Tariffs) (cont'd)	
[Paragraph 3, option 3 of 3] cont'd	
8. Each Party may request consultation regarding any tariff of an airline of either Party for services covered by this Agreement, including where the tariff concerned has been subject to a notice of disapproval or dissatisfaction. Such consultations shall be held not later than _ days after receipt of the request. The Parties shall cooperate in securing information necessary for reasoned resolution of the issues. If the Parties reach agreement, each Party shall use its best efforts to put that agreement into effect. If no agreement is reached, the decision of the Party in whose territory the carriage originates shall prevail. 9. A tariff established in accordance with the provisions of this clause shall remain in force, unless withdrawn by the airline(s) concerned or until a new tariff has been approved. [However a tariff shall not be prolonged for more than _ months after the date on which it otherwise would have expired unless approved by the Parties. Where a tariff has been approved without an expiry date and where no new tariff has been filed and approved, that tariff shall remain in force until either of the Parties gives notice terminating its approval on its own initiative or at the request of the airline(s) concerned. Such termination shall not take place with less than _ days notice.] 10. [The Parties shall endeavour to ensure that active and effective machinery exists within their jurisdictions to investigate violations by any airline, passenger or freight agent, tour organizer, or freight forwarder, of tariffs established in accordance with this Article. They shall furthermore ensure that the violation of such tariffs is punishable by deterrent measures on a consistent and non-discriminatory basis.]	<i>A traditional settlement of dispute provision involving arbitration is not applicable in the case of country of origin or dual disapproval, where only a consultation provision would apply. However, disputes that arise over such anti-competitive practices as predatory pricing may well arise in the case of the country of origin and dual disapproval approaches. Because of the time sensitive nature of tariffs in these kinds of disputes under these more liberal regimes, the Parties may wish to utilize the more accelerated dispute resolution procedure specifically developed for tariffs and capacity as set out in the article on dispute settlement.</i> <i>The text on the duration of established tariffs covers such circumstances as a withdrawal of the tariffs by the airline(s) concerned, or a disapproval (of a previously approved tariff) by the Party in whose territory the carriage originates.</i> <i>Prolongation beyond the expiry date is subject to the applicable approval regime and may be limited to 12 months.</i> <i>A provision on tariff enforcement is included on an optional basis.</i>

Article 17 Pricing (Tariffs) (cont'd)	
[Paragraph 2, option 1 of 2] 2. Each Party may require notification or filing of tariffs proposed by the designated airline(s) [of the other Party] [of both Parties] for carriage to or from its territory. Such notification or filing may be required not more than _ days before the proposed date of introduction. In special cases, this period may be reduced. [Paragraph 2, option 2 of 2] 2. Prices for international air transportation between the territories of the Parties shall not be required to be filed, unless such filing shall be required for the purpose of implementing a mutual agreement reached under paragraph 3 of this Article. Neither Party shall require notification or filing by airlines of the other Party of prices charged by caterers to the public, except as may be required on a non-discriminatory basis for information purposes. Notwithstanding the foregoing, the designated airlines of the Parties shall continue to provide immediate access, on request, to information on historical, existing and proposed prices to the aeronautical authorities of the Parties in a manner and format acceptable to those aeronautical authorities. 3. Neither Party shall take unilateral action to prevent the inauguration of a proposed tariff or the continuation of an effective tariff of a designated airline of either Party [or on the basis of reciprocity of the airline(s) of a third State] for carriage between the territories of the Parties [or between the territory of the other Party and that of a third State.]	<i>Two alternative approaches to the filing of tariffs are set out in paragraph 2, one which requires filing and the other which does not. Parties may agree to dispense with formal tariff filing altogether.</i> <i>The possibility of unilateral action to intervene is further circumscribed in this provision by paragraph 3 which prohibits unilateral action to prevent the inauguration or continuation of a price proposed to be charged. The only recourse, if one Party is dissatisfied or believes that a price is inconsistent with the considerations on unfair competitive practices set out in paragraph 1, is to the consultation mechanism. The prices would go into effect or continue in effect if no agreement comes out of the consultation process.</i>

Article 17 Pricing (Tariffs) (cont'd)	
[Paragraph 2, option 2 of 2]	
4. [Approval of tariffs consequent upon the provisions of Paragraph 3 above may be given expressly by either Party to the airline(s) filing the tariffs. Where either Party believes that a tariff falls within the categories described in Paragraph 1 above, such Party shall give notice of dissatisfaction to the other Party [as soon as possible and at least] within _ days of the date of notification or filing of the tariff, and may avail itself of the consultation procedures set out in Paragraph 5 below. However, unless both Parties have agreed in writing to disapprove the tariffs concerned under those procedures, the tariffs shall be considered approved.] 5. Each Party may request consultation regarding any tariff of an airline of either Party for services covered by this Agreement, including where the tariff concerned has been subject to a notice of dissatisfaction. Such consultations shall be held not later than _ days after receipt of the request. The Parties shall cooperate in securing information necessary for reasoned resolution of the issues. If the Parties reach agreement with respect to a tariff for which notice of dissatisfaction has been given, each Party shall use its best efforts to put that agreement into effect but if no agreement is reached the tariff in question shall go into or continue in effect. Full liberalization	<i>As with the country of origin approach, the Parties may wish to modify this provision to address a dispute through the article on dispute settlement when the consultation process fails to achieve agreement. In such a case the final sentence of paragraph 3, on the price going into effect if there is no agreement, would be affected. The filing period, the period within which any disapproval must be notified has been left blank (usually 15 days for a 30 day filing/notification), to be settled by the Parties according to their particular bilateral circumstances.</i> <i>A text, similar to the country of origin, on the duration of established tariffs may be included to cover such circumstances as a withdrawal of the tariffs by the airline(s) concerned, or a disapproval by both Parties.</i>
Prices [Tariffs] charged by airlines shall not be required to be filed with, or approved, by either Party.	<i>Under full liberalization, tariffs could not be disapproved for any reason. Airlines practices with respect to tariffs would continue, however, to be subject to the competition laws of the Parties.</i>

Article 18 Safeguards	
1. The Parties agree that the following airline practices may be regarded as possible unfair competitive practices which may merit closer examination: a) charging fares and rates on routes at levels which are, in the aggregate, insufficient to cover the costs of providing the services to which they relate; b) the addition of excessive capacity or frequency of service; c) the practices in question are sustained rather than temporary; d) the practices in question have a serious negative economic effect on, or cause significant damage to, another airline; e) the practices in question reflect an apparent intent or have the probable effect, of crippling, excluding or driving another airline from the market; and f) behaviour indicating an abuse of dominant position on the route. 2. If the aeronautical authorities of one Party consider that an operation or operations intended or conducted by the designated airline of the other Party may constitute unfair competitive behaviour in accordance with the indicators listed in paragraph 1, they may request consultation in accordance with Article _ [Consultation] with a view to resolving the problem. Any such request shall be accompanied by notice of the reasons for the request, and the consultation shall begin within 15 days of the request. 3. If the Parties fail to reach a resolution of the problem through consultations, either Party may invoke the dispute resolution mechanism under Article _ [Settlement of disputes] to resolve the dispute.	<i>The provision on Safeguards will only be relevant and applicable if the Parties have agreed to move to a liberalized, even if not a fully “open skies” environment for their designated carriers. The list of airline commercial practices that may be signals of possible unfair competitive practices are indicative only and were developed by ICAO and distributed to Contracting States as a Recommendation. This provision could be used where two States have agreed to move toward a less controlled regime but either one or both parties do not have competition laws, they may need to have a mutually-agreed set of descriptions of what would constitute unfair and/or fair competitive practices as a safeguard measure. Given the particular competitive environment in which the airlines will operate and the competition law regimes applicable to their respective territories, the Parties may decide on other indicators of unfair competitive behaviour which could be included in this provision.</i> <i>The “safeguard mechanism” consists of the safeguards provision together with the fourth alternative on dispute settlement, a mediation process based on an ICAO Recommendation which is contained in the Dispute Settlement Article.</i> <i>As an alternative to the safeguard mechanism, Parties could agree on the phasing in of full market access and other provisions, to ease the transition to full liberalization (see Annex IV).</i>

Article 19 Competition laws	
1. The Parties shall inform each other about their competition laws, policies and practices or changes thereto, and any particular objectives thereof, which could affect the operation of air transport services under this agreement and shall identify the authorities responsible for their implementation. 2. The Parties shall, to the extent permitted under their own laws and regulations, assist each other's airlines by providing guidance as to the compatibility of any proposed airline practice with their competition laws, policies and practices. 3. The Parties shall notify each other whenever they consider that there may be incompatibility between the application of their competition laws, policies and practices and the matters related to the operation of this Agreement; the consultation process contained in this Agreement shall, if so requested by either Party, be used to determine whether such a conflict exists and to seek ways of resolving or minimizing it. 4. The Parties shall notify one another of their intention to begin proceedings against each other's airline(s) or of the institution of any relevant private legal actions under their competition laws which may come to their attention. 5. Without prejudice to the right of action of either Party the consultation process contained in this agreement shall be used whenever either Party so requests and should aim to identify the respective interests of the Parties and the likely implications arising from the particular competition law action. 6. The Parties shall endeavour to reach agreement during such consultations, having due regard to the relevant interests of each Party and to alternative means which might also achieve the objectives of that competition law action.	<i>The foregoing model clause developed by ICAO is intended to be a comprehensive but adaptable set of procedures wherever two Parties have experienced or may experience difficulties in their air transport relations from the application of national competition laws. The provisions place emphasis on notification, cooperation, restraint and the consultation process to avoid and resolve conflicts or potential conflicts. Its use by the Parties would not be relevant, for example, where both Parties endorse cooperative airline practices, such as tariff coordination, and neither Party has a competition law. Nor is it intended to supplement any existing procedures and the obligations to be included would, of course, have to be agreed by the Parties' competition authorities. In general it seeks to strengthen the bilateral machinery for conflict avoidance and resolution and to bring issues in the application of competition law standards to air transport into the bilateral framework. The clause draws mainly on the concepts and principles set out in detailed Guidelines on this topic that were developed by ICAO concurrently with this model clause (see Doc 9587).</i>

Article 19 Competition laws (cont'd)	
7. In the event agreement is not reached, each Party shall, in implementing its competition laws, policies and practices, give full and sympathetic consideration to the views expressed by the other Party and shall have regard to international comity, moderation and restraint. 8. The Party under whose competition laws a private legal action has been instituted shall facilitate access by the other Party to the relevant judicial body and/or, as appropriate, provide information to that body. Such information could include its own foreign relations interests, the interests of the other Party as notified by that Party and, if possible, the results of any consultation with that other Party concerning the action. 9. The Parties shall cooperate, to the extent not precluded by their national laws or policies and in accordance with any applicable international obligations, in allowing the disclosure by their airlines or other nationals of information pertinent to a competition law action to the competent authorities of each other, provided that such cooperation or disclosure would not be contrary to their significant national interests. 10. While an action taken by the competition law authorities of one Party is the subject of consultations with the other Party, the Party in whose territory the action is being taken shall, pending the outcome of these consultations, refrain from requiring the disclosure of information situated in the territory of the other Party and that other Party shall refrain from applying any blocking legislation.	

Article 20 Currency conversion and remittance of earnings	
Each Party shall permit airline(s) of the other Party to convert and transmit abroad to the airline's(s') choice of State, on demand, all local revenues from the sale of air transport services and associated activities directly linked to air transport in excess of sums locally disbursed, with conversion and remittance permitted promptly without restrictions, discrimination or taxation in respect thereof at the rate of exchange applicable as of the date of the request for conversion and remittance.	<i>In some agreements, this provision could be a separate article or could also be part of a "Commercial opportunities" Article.</i> <i>This ICAO-developed provision to facilitate currency conversion and remittance is a more comprehensive version of a provision found in almost all bilateral air service agreements.</i> <i>The term "associated activities directly linked to air transport" would normally include activities closely related to the provision of air services, such as a bus service between the airport and hotels, and where permitted, the provision of ground handling services to other airlines. The term would not include activities such as revenue from hotels, car rentals, investments in local real estate or stocks and bonds, which will presumably be subject to a different conversion and remittance regime. The term "without taxation" refers to taxation on the conversion and remittance, not to national income tax, which is dealt with in the Article on "Taxation".</i>

Article 21 Sale and marketing of air service products	
1. Each Party shall accord airlines of the other Party the right to sell and market international air services and related products in its territory (directly or through agents or other intermediaries of the airline's choice), including the right to establish offices, both on-line and off-line. 2. [Each airline shall have the right to sell transportation in the currency of that territory or, at its discretion, in freely convertible currencies of other countries, and any person shall be free to purchase such transportation in currencies accepted by that airline.]	<i>In some agreements, this provision could be a separate article or could also be part of a "Commercial opportunities" Article.</i> <i>Some provisions in this Article refer to "designated airlines". Parties would need to consider whether the provisions on the activities contained in this Article should also be extended to all airlines of a Party rather than only designated ones.</i> <i>This ICAO-developed provision provides a simple but fair standard for authorizing airlines to sell and market their services. This clause does not apply to the sale and marketing of air service products through computer reservation systems (CRSs) which is dealt with by a separate provision. The term "on-line office" describes a situation where an office is located in a city or country served by the airline directly; an "off-line office" is located in a city/country not directly served by the airline. Some recent bilateral agreements add the alternative provision in brackets.</i> <i>The optional text provides assurance to airlines that they can freely sell in convertible currencies accepted for sale by that airline, while not requiring airlines to accept currencies in which the airlines do not deal.</i>

Article 22 Non-national personnel and access to local services	
Traditional and Transitional 1. The designated airline or airlines of one Party shall be allowed, on the basis of reciprocity, to bring into and to maintain in the territory of the other Party their representatives and commercial, operational and technical staff as required in connection with the operation of the agreed services. 2. These staff requirements may, at the option of the designated airline or airlines of one Party, be satisfied by its own personnel or by using the services of any other organization, company or airline operating in the territory of the other Party and authorized to perform such services for other airlines. 3. The representatives and staff shall be subject to the laws and regulations in force of the other Party, and consistent with such laws and regulations: a) each Party shall, on the basis of reciprocity and with the minimum of delay, grant the necessary employment authorizations, visitor visas or other similar documents to the representatives and staff referred to in paragraph 1 of this Article; and b) both Parties shall facilitate and expedite the requirement of employment authorizations for personnel performing certain temporary duties not exceeding ninety (90) days.	<i>In some agreements, this provision could be a separate article or could also be part of a “Commercial opportunities” Article.</i> <i>Some provisions in this Article refer to “designated airlines”. Parties would need to consider whether the provisions on the activities contained in this Article should also be extended to all airlines of a Party rather than only designated ones.</i> <i>The traditional and transitional approaches rely on reciprocity which, if interpreted in a quantitative manner, would result in a numerical limitation on the number of airline employees which could be stationed in the other Party’s territory.</i> <i>Paragraph 3b) provides for temporary employees for whom the employment and residence requirements could be less extensive than for long-term employees.</i>

Article 22 Non-national personnel and access to local services (cont'd)	
Full liberalization Each Party shall permit designated airlines of the other Party to: a) bring in to its territory and maintain non-national employees who perform managerial, commercial, technical, operational and other specialist duties which are required for the provision of air transport services, consistent with the laws and regulations of the receiving State concerning entry, residence and employment; and b) use the services and personnel of any other organization, company or airline operating in its territory and authorized to provide such services.	<i>Paragraph a) of this ICAO provision on non-national personnel, is intended to facilitate the stationing abroad of certain airline personnel – those who perform managerial, commercial, technical and operational duties. The provision is subject to international obligations as well as national laws of the receiving Party concerning entry, residence and employment, which in most cases should be flexible enough to accommodate the obligations of a Party under this provision.</i> <i>Paragraph b) is intended to respond to the need to accommodate the more frequent use of personnel from third countries by air carriers as a result of the increasing number of alliances and the globalization of airline commercial activities. Consequently, it would include the ability to use personnel and services of an airline partner in an alliance or codeshare arrangement, as well as any local company or organization authorized to provide a service.</i> <i>In some agreements, this provision could be a separate article, could also be part of a “Commercial opportunities” Article, or could be covered in the Route schedule.</i>

Article 23 Change of gauge Traditional	
1. In operating any agreed service on any specified route a designated airline of one Party may substitute one aircraft for another at a point in the territory of the other Party on the following conditions only: a) that it is justified by reason of economy of operation; b) that the aircraft used on the section of the route more distant from the terminal in the territory of the first Party is not larger in capacity than that used on the nearer section; c) that the aircraft used on the more distant section shall operate only in connection with and as an extension of the service provided by the aircraft used on the nearer section and shall be scheduled so to do; the former shall arrive at the point of change for the purpose of carrying traffic transferred from or to be transferred into, the aircraft used on the nearer section; and its capacity shall be determined with primary reference to this purpose; d) that there is an adequate volume of through traffic; e) that the airline [shall not hold itself out to the public by advertisement or otherwise] [shall not hold itself out directly or indirectly and whether in timetables, computer reservation systems, fare quote systems or advertisements, or by other means], [as providing a service which originates at a point where the change of aircraft is made] as providing any service other than the agreed service on the relevant specified routes; f) that where an agreed service includes a change of aircraft this fact is shown in all timetables, computer reservation systems, fare quote systems, advertisements and other like means;	<i>A provision on change of gauge may be a stand alone article or be dealt with in the route schedule. Generally, a change of gauge enables an airline to operate more economically over international route sectors distant from its own territory by more closely matching the capacity of its flights on such sectors to the lower volumes of traffic to and from its home territory normally expected in the case of the more remote sectors of a long-haul route.</i> <i>In the traditional type of change of gauge formula a change of aircraft is permitted, but subject to a number of conditions including scheduling coordination, size of aircraft, volume of traffic and capacity limitations in the case of a capacity controlled regime. The conditions are aimed at permitting, but nevertheless circumscribing the use of change of gauge. In sub-paragraph e), optional text is given to encompass other modern marketing and selling means than advertising when holding out a change of gauge service. In sub-paragraph h), the optional text provides greater flexibility for the operating carrier by enabling, subject to authorization, more than one flight from the change point. However, the other conditions on change of gauge would continue to apply.</i>

Article 23 Change of gauge (cont'd)	
Traditional (cont'd) g) that the provisions of Article _ of this Agreement shall govern all arrangements made with regard to change of aircraft; and h) that in connection with any one aircraft flight into the territory in which the change of aircraft is made, only one flight may be made out of that territory [unless the airline is authorized by the aeronautical authorities of the other Party to operate more than one flight]. 2. The provisions of paragraph 1 of this Article shall: a) not restrict the right of a designated airline to change aircraft in the territory of the Party designating that airline; and b) not allow a designated airline of one Party to station its own aircraft in the territory of the other Party for the purpose of change of aircraft. 3. The provisions of this Article shall not limit the ability of an airline to provide services through codesharing and/or blocked space arrangements as provided for in this Agreement [the Route Schedules of this Agreement]. Transitional 1. Each designated airline may on any or all flights on the agreed services and at its option, change aircraft in the territory of the other Party or at any point along the specified routes, provided that: a) aircraft used beyond the point of change of aircraft shall be scheduled in coincidence with the inbound or outbound aircraft, as the case may be; and	<i>Paragraph 2 allows unrestricted change of gauge in an airline's own country but prohibits stationing aircraft in the other Party's territory.</i> <i>The provisions of traditional change of gauge articles often cannot be practically applied to codeshare and/or blocked space situations and if these activities are to be permitted, an exception to the change of gauge provisions is needed. The bracketed language will be used when the Route schedules are contained in an Annex to the Agreement. In such cases, States may wish to include change of gauge provisions in that Annex.</i> <i>The transitional approach is a more modern and flexible change of gauge formula, one which is constrained only by conditions regarding scheduling coordination, and size of aircraft when there is more than one aircraft operating beyond the point of change. The references in paragraph 2 to the use of leased equipment and commercial arrangements presupposes that the Parties have also agreed on these matters.</i>

Article 23 Change of gauge (cont'd)	
Transitional (cont'd) b) in the case of a change of aircraft in the territory of the other Party and where more than one aircraft is operated beyond the point of change, not more than one such aircraft may be of equal size and none may be larger than the aircraft used on the third and fourth freedom sector. 2. For the purpose of change of gauge operations, a designated airline may use its own equipment and, subject to national regulations, leased equipment, and may operate under commercial arrangements with another airline. 3. A designated airline may use different or identical flight numbers for the sectors of its change of aircraft operations. Full liberalization On any international segment or segments of the agreed routes, a designated airline may perform international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated; provided that [with the exception of all-cargo services] the transportation beyond such point is a continuation of the transportation from the territory of the Party that has designated the airline and, in the inbound direction, the transportation to the territory of the Party that has designated the airline is a continuation of the transportation from beyond such point.	<i>The full liberalization approach is found in many “open skies” agreements and it provides extensive operational flexibility in the use of equipment. This type of provision would, for example, enable a hub-type operation to be established at the change point, subject of course to agreement being reached with other relevant bilateral partners. The only restriction is that services be conducted in a linear fashion, that is that the flight on the second sector be the extension or continuation of the prior connecting outbound or inbound flight. The bracketed language removes this restriction for all-cargo services.</i> <i>In some fully liberalized agreements, there is no need to retain a restriction requiring a service to be a continuation of a connecting flight. In these agreements, there is no need for a separate article, and a reference to “no restriction” is made in the Route schedule.</i>

Article 24 Ground handling	
Traditional Subject to applicable safety provisions, including ICAO Standards and Recommended Practices (SARPs) contained in Annex 6, the designated airline may on the basis of reciprocity, use the services of a designated airline of the other Party for ground handling services in that Party's territory. Transitional [Option 1 of 2] Subject to applicable safety provisions, including ICAO Standards and Recommended Practices (SARPs) contained in Annex 6, the designated airline may choose from among competing providers of ground handling services. [Option 2 of 2] 1. Subject to applicable safety provisions, including ICAO Standards and Recommended Practices (SARPs) contained in Annex 6, the designated airline or airlines of one Party shall be permitted, on the basis of reciprocity, to perform its own ground handling in the territory of the other Party and, at its option, to have ground handling services provided in whole or in part by any agent authorized by the competent authorities of the other Party to provide such services.	<i>In some agreements, this provision could be a separate article or could also be part of a "Commercial opportunities" Article.</i> <i>All provisions should contain a cross reference to safety provisions. Sentence which indicates ground handling will be covered by Annex 6.</i> <i>Some provisions in this Article refer to "designated airlines". Parties would need to consider whether the provisions on the activities contained in this Article should also be extended to all airlines of a Party rather than only designated ones.</i> <i>The reciprocal nature of the traditional approach generally results in satisfactory ground handling services being provided where designated airlines of both Parties serve the same airports in both Parties. However, where there is no reciprocity (for example, if no designated airline of the other Party serves an airport where the designated airlines of the first Party have ground handling services) airlines sometimes find the services unsatisfactory and prices non-competitive.</i> <i>This approach allows a designated airline to choose from among competing providers of ground handling services. This can provide some improvement in services and cost depending on the degree of competition among the providers. This approach is commonly found at airports with a large number of airlines and physical limitations on the number of ground handlers that can be accommodated.</i> <i>This transition permits an airline on the basis of reciprocity to perform its own ground handling, or choose to have those services provided by any agent authorized by the competent authority of the other Party, to provide ground handling services to other airlines operating at the same airport in the territory of the other Party.</i>

Article 24 Ground handling (cont'd)	
Transitional [Option 2 of 2] (cont'd) 2. The designated airline or airlines of one Party shall also have the right to provide ground handling services for other airlines operating at the same airport in the territory of the other Party. 3. The exercise of the rights set forth in paragraphs 1 and 2 of this Article shall be subject only to physical or operational constraints resulting from considerations of airport safety or security. Any constraints shall be applied uniformly and on terms no less favourable than the most favourable terms available to any airline engaged in similar international air services at the time the constraints are imposed. Full liberalization 1. Subject to applicable safety provisions, including ICAO Standards and Recommended Practices (SARPs) contained in Annex 6, each Party shall authorize airline(s) of the other Party, at each airline's choice, to: a) perform its own ground handling services; b) handle another or other air carrier(s); c) join with others in forming a service-providing entity; and/or d) select among competing service providers. 2. An air carrier is permitted to choose freely from among the alternatives available and to combine or change its option, except where this is demonstrably impractical and also where constrained by relevant safety and security considerations, and (with the exception of self-handling in a) above) by the scale of airport operations being too small to sustain competitive providers. 3. Parties would always be required to take the necessary measures to ensure reasonable cost-based pricing and fair and equal treatment for air carrier(s) of the other Party/Parties.	<i>Paragraph 3 recognizes that ground handling rights may have to be constrained but only due to airport safety or security considerations. It also accords most favoured nation and national treatment to the application of any such constraints.</i> <i>In the full liberalization approach, developed by ICAO, the designated airline has a wider choice with respect to ground handling: it can perform its own, or use those of another airline, provide the services to other airlines, or join with other airlines in providing the services collectively, or choose from among competing providers (see Doc 9587).</i> <i>Depending on their particular circumstances, States should consider the gradual, phased introduction of self-handling and multiple suppliers based, where appropriate, on the size of the airport.</i> <i>At certain airports the number of air carriers and limited physical facilities may not permit all air carriers to perform their own airside ground handling; in such cases, carriers allowed to do so should be selected by objective, transparent and non-discriminatory procedures and competitive, alternative suppliers should be available.</i>

Article 25 Codesharing/Cooperative arrangements	
Traditional [Option 1 of 2] Transitional Each designated airline may enter into cooperative marketing arrangements such as joint-venture, blocked space and codeshare with airlines of either Party, provided that both airlines involved hold the appropriate authority and meet the requirements normally applied to such arrangements. Full liberalization 1. In operating or holding out the authorized services on the agreed routes, any designated airline of one Party may enter into cooperative marketing arrangements such as joint venture, blocked space or codesharing arrangements, with: a) an airline or airlines of either Party; b) an airline or airlines of a third country; and c) a surface transportation provider of any country,	<i>Codesharing may be treated in the same manner as other cooperative airline arrangements, requiring the airlines involved to have the appropriate authority (in the case of codesharing, the underlying traffic rights) and meet the requirements normally applied to such agreements. However, for States which may wish to have a specific article on codesharing, the following text is provided.</i> <i>Alternatively, some States may find it preferable that codesharing be addressed in an Article on Commercial opportunities or in the notes to the Route schedule.</i> <i>Most traditional agreements deal implicitly with interlining through the approval of interline tariffs, but rarely have specific provisions concerning the use of leased aircraft, blocked space and the more recent codesharing arrangements. Such arrangements are either approved by the aeronautical authorities concerned on a case-by-case basis or under Memoranda of Understanding.</i> <i>The transitional approach specifically recognizes the use of these types of cooperative agreements, but limits them to designated airlines of the Parties to the agreement. As a transition measure, some bilateral agreements limit the use of codesharing to specific routes or a specific number of flights which could be further modified by subsequent discussions and/or an exchange of notes.</i> <i>The full liberalization stage includes cooperative arrangements with third-country airlines and surface providers. In most “open skies” agreements it also includes wet leasing between airlines of the Parties but for the purposes of this Template Agreement separate provisions on leasing have been included.</i>

Article 25 Codesharing/Cooperative arrangements (cont'd)	
Full liberalization (cont'd) provided that all airlines in such arrangements 1) hold the appropriate authority and 2) meet the requirements normally applied to such arrangements. 2. The Parties agree to take the necessary action to ensure that consumers are fully informed and protected with respect to codeshared flights operating to or from their territory and that, as a minimum, passengers be provided with the necessary information in the following ways: a) orally and, if possible, in writing at the time of booking; b) in written form, on the ticket itself and/or (if not possible), on the itinerary document accompanying the ticket or on any other document replacing the ticket, such as a written confirmation, including information on whom to contact in case of a problem and a clear indication of which airline is responsible in case of damage or accident; and c) orally again, by the airline's ground staff at all stages of the journey. [3. The airlines are required to file for approval any proposed cooperative arrangement with the aeronautical authorities of both Parties at least ____ days before its proposed introduction]. [Option 2 of 2] Transitional and Full liberalization 1. Subject to the regulatory requirements normally applied to such operations by the aeronautical authorities of each Party, each designated airline of the other Party may enter into cooperative arrangements for the purpose of:	<i>The phrase, "the requirements normally applied" to the cooperative arrangements would include, in the case of codesharing for example, requirements for consumer notification and protection. This could take the form of an additional article drawn from Doc 9587.</i> <i>The term in b) "any other document replacing the ticket, such as written confirmation" includes electronic ticketing.</i> <i>The optional filing requirement could serve as a means for the aeronautical authorities to verify that all airlines have the appropriate authority and meet requirements applied to such arrangements. Alternatively, national law and regulations may be used for this purpose.</i>

Article 25 Codesharing/Cooperative arrangements (cont'd)	
[Option 2 of 2 (cont'd)] Transitional and Full liberalization (cont'd) a) holding out the agreed services on the specified routes by codesharing (i.e. selling transportation under its own code) on flights operated by an airline(s) of either Party [and/or of any third country]; and/or b) carrying traffic under the code of any other airline(s) where such other airline(s) has been authorized by the aeronautical authorities of one Party to sell transportation under its own code on flights operated by that designated airline of the other Party. 2. Codesharing services involving transportation between points in one Party shall be restricted to flights operated by (an) airline(s) authorized by the aeronautical authorities of that Party to provide service between points in that Party's territory and all transportation between points in such territory under the code of the designated airline(s) of the other Party shall only be available as part of an international journey. All airlines involved in codesharing arrangements shall hold the appropriate underlying route authority. Airlines shall be permitted to transfer traffic between aircraft involved in codeshare services without limitation. The aeronautical authorities of one Party shall not withhold permission for codesharing services identified in a) above by the designated airline(s) of the other Party on the basis that the airline(s) operating the aircraft does not have the right from such aeronautical authorities to carry traffic under the code of the designated airline(s) of the other Party.	<i>Sub-paragraph a) allows air carriers to hold out their services by selling transportation under their own codes (marketing carriers) on flights operated by airlines of either Party and/or third country carriers (operating carriers), where the bracketed language is included. (To limit codesharing to designated airlines of the Parties, the bracketed language should be omitted.).</i> <i>Sub-paragraph b) allows designated airlines to carry the codes of other airlines.</i> <i>The first sentence of paragraph 2 allows codesharing on domestic segments in a Party's territory, but only as part of an international journey. The last sentence of paragraph 2 prohibits aeronautical authorities of a Party from withholding codeshare approval on the basis that the operating airline does not have the rights from that Party to carry traffic under the code of the designated airline of the other Party. If such withholding were allowed, many potential codeshare opportunities that the provisions are intended to permit could be prevented by the other Party.</i>

Article 25 Codesharing/Cooperative arrangements (cont'd)	
[Option 2 of 2] Transitional and Full liberalization (cont'd) 3. For the purposes of Article _ (Capacity) of the Agreement, there shall be no limit imposed by the aeronautical authorities of one Party on the capacity to be offered by the airline or airlines designated by the other Party on codesharing services.	<i>Paragraph 3 recognizes the importance of clarity with respect to the capacity entitlements permitted for codeshare operations. Often there are no limitations on the capacity that may be offered by marketing air carriers on codeshare services; however, flights operated with their own equipment by carriers that are designated under the agreement are frequently subject to capacity restrictions whether or not another air carrier's code is also used on the flights. The capacity of third country operating air carriers is normally only subject to the provisions of an air agreement between the State of the operating air carrier and the other Party.</i>

Article 26 Aircraft leasing	
1.* Either Party may prevent the use of leased aircraft for services under this agreement which does not comply with Articles _ (Safety) and _ (Security).	<i>Definitions</i> <i>a) the term “wet lease” means the lease of an aircraft with crew</i> <i>b) the term “dry lease” means the lease of an aircraft without crew</i> <i>This paragraph treats leased aircraft on the same basis vis-à-vis safety and security as other aircraft operated by designated airlines under the agreement. It makes clear that a party can prevent the use of leased aircraft that do not meet safety and security standards. In implementing this type of paragraph, some States require prior filing of leasing arrangements involving international routes to permit timely action to be taken if the authorities have safety concerns. In some instances, States may use lists of airlines from which aircraft may be leased, and/or lists of airlines from which they may not be leased, based, for example, on ICAO Safety Oversight audit reports or the records of ramp inspections.</i> <i>To meet safety concerns with the use of leased aircraft in certain situations, States in all three stages can use agreements under Article 83 bis to transfer certain responsibilities of the State of Registry under the Convention to the State of the Aircraft Operator in accordance with relevant ICAO guidance. A Party which has not ratified Article 83 bis (and is therefore not bound to recognize an agreement concluded under that amendment) could agree to recognize a transfer of responsibilities pursuant to an agreement under Article 83 bis concluded by the other (another) Party to the air service agreement. This recognition would, of course, only extend to operations under the relevant air service agreement.</i>

Article 26 Aircraft leasing (cont'd)	
Traditional 2. Subject to paragraph 1 above, the designated airlines of each Party may use leased aircraft from other airlines to operate the agreed services under this agreement, provided that the leasing arrangements entered into satisfy the following conditions: a) such arrangements are not equivalent to giving a lessor airline of another country access to traffic rights not otherwise available to that airline; b) the financial benefit to be obtained by the lessor airline will not be related to the financial success of the operations of the lessee airline; and c) the agreed services operated by the lessee airline when using the leased aircraft will not be linked so as to provide through services by the same aircraft to or from services operated by the lessor airline on its own route or routes.	<i>As a practical matter, a Party with safety concerns about a specific situation involving the use of leased aircraft may find it easier, at least initially, to consult with the Party whose airline has leased the aircraft, bearing in mind that the State of the lessor airline may not be a party to the agreement. In considering action under paragraph 1, States should first assess whether their safety concerns with leased aircraft have been addressed by the use of existing ICAO guidance and procedures which make clear the responsibility for continuing airworthiness and the adequacy of operating and maintenance standards in respect of such leased aircraft, taking into account relevant ICAO Standards and Recommended Practices (SARPS) and guidance such as the “Manual of Procedures for Operations, Inspection, Certification and Continued Surveillance” (Doc 8335), the “Airworthiness Manual” (Doc 9760), and the “Guidance on the Implementation of Article 83 bis of the Convention on International Civil Aviation” (Circular 295).</i> <i>These paragraphs set out conditions for the use of leased aircraft, which are designed to ensure that the rights granted in the agreement are exercised by, and benefit, only the designated airlines of the two Contracting Parties. Procedurally, prior approval by the aeronautical authorities is generally required for using leased aircraft except the cases specified in paragraph 5.</i>

Article 26 Aircraft leasing (cont'd)	
Traditional (cont'd) 3. The proposed leasing arrangements will be subject to the approval of the aeronautical authorities of both Contracting Parties. The designated airline proposing the use of leased aircraft shall give the aeronautical authorities of each Contracting Party the earliest possible notification of the proposed terms of such arrangements. 4. However, the aeronautical authorities shall not withhold approval of arrangements under which the designated airline or airlines of either Contracting Party lease aircraft for emergency reasons, provided that the period of such arrangements does not exceed [90] days and the aeronautical authorities are notified of the terms of such arrangements including the nature of the emergency. 5. Nothing in the foregoing will prevent the leasing of aircraft by a designated airline from the other designated airline or airlines of either Contracting Party or from a non-airline source which does not control (and is not controlled by and is not under common control with) another airline. In such cases a simple notification by the designated airline to the aeronautical authorities of the other Contracting Party will suffice. Transitional	<i>Under this approach, a choice of two options are provided. The main difference is in the treatment of wet-leased aircraft from third countries.</i> <i>Dry leases from non-airline owners, sometimes known as “financial” leases, are virtually universally permitted and are not generally the subject of air services agreements. Some States, however, have included express reference to such leases in their air services agreements. Optional languages [shown in square brackets] are provided within each approach.</i>

Article 26 Leasing (cont'd)	
Transitional (cont'd) [Option 1 of 2] 2 Subject to paragraph 1 above, the designated airlines of each Party may provide services under this agreement by: a) using aircraft dry-leased from any [company including] airlines; b) using aircraft wet-leased from other airlines of the same Party; c) using aircraft wet-leased from airlines of the other Party; and d) using aircraft wet-leased from airlines of third countries, provided that all airlines participating in the arrangements listed in b), c) and d) above, hold the appropriate authorization and meet the requirements normally applied to those arrangements.	<i>Some States may, by national law, policy or regulation, or mutual agreement between aeronautical authorities concerned, authorize in advance one or more types of aircraft leases, such as dry leases from any airline, wet leases between airlines of the same Party, wet leases from airlines of the other Party, or wet leases from airlines of third countries, subject in all cases to enforcement of applicable bilateral, national and regional safety and security provisions.</i> <i>In some cases, a State may prevent the operation of services by an airline whose fleet is composed of mostly or all wet-leased aircraft from a third party.</i> <i>The term “appropriate authorization” has a meaning broader than the usual “route and/or traffic rights” granted under a bilateral agreement, and includes:</i> <i>i) the economic and safety-related operating authorization that the lessor and lessee airlines have been granted (whether or not under the bilateral agreement) on the routes to be served; and</i> <i>ii) any other national or regional approvals required for the particular type of lease involved.</i> <i>This paragraph covers four leasing situations described in the four subparagraphs. In the case of situation a) [dry leases], such use is permitted without restriction, subject only to safety and security requirements. Some States prefer to deal with dry-leased aircraft owned by airlines only in the agreement while others may want to expressly cover all dry leases including those from non-airline entities.</i>

Article 26 Leasing (cont'd)		
Transitional (cont'd) [Option 1 of 2]		<i>In the case of situations b) and c), this option allows such use by subjecting it to both safety and security requirements as well as a requirement that the lessor and lessee possess the necessary operating authorization. Although both the lessor and lessee would ordinarily have the necessary operating authorization in such situations, they are listed separately here to cover a possible situation where the safety requirements of the State of the lessee may not permit any wet leases from airlines of other States (e.g. the United States).</i> <i>For situation d) [wet leases from airlines of third countries], this option allows such use by subjecting it to a broader authority requirement which includes not only the grant of any necessary economic rights to the airlines in the leasing arrangement, but also any national or regional approvals required. This takes into account the situation where States may require specific authorization for certain operations with leased aircraft.</i>
[Option 2 of 2] 2. Subject to paragraph 1 above, the designated airlines of each Party may provide services under this agreement by: a) using aircraft dry-leased from any [company including] airlines; b) using aircraft wet-leased from other airlines of the same Party c) using aircraft wet-leased from airlines of the other Party; d) using aircraft wet-leased from airlines of third countries, provided that this will only be done under arrangements which are not equivalent to giving a lessor airline access to traffic rights not otherwise available to that airline.		<i>This option allows the use of leased aircraft in the first three situations subject only to safety and security requirements. In the case of situation d), unlike the first option, this second option permits such use with a more specific and restrictive condition, namely, the arrangement would not result in the lessor airline providing the aircraft and crew exercising traffic rights it does not have.</i>

Article 26 Leasing (cont'd)	
Transitional (cont'd) [Option 2 of 2] 3. Notwithstanding paragraph 2 d) above, the designated airlines of each Party may provide services under this agreement by using aircraft wet-leased on a short-term, ad hoc basis from airlines of third countries. Full liberalization 2. Subject to paragraph 1, the designated airlines of each Party may operate services under this agreement by using leased aircraft which meets applicable safety and security requirements.	<i>Paragraph 3 of this second option creates an exception to the traffic rights requirement in paragraph 2 d) in order to deal with unforeseen emergency situations such as those in which an aircraft must be replaced by an aircraft with crew on an urgent basis for a limited period of time, such as, for example, the operation of one or several flights when the original aircraft unexpectedly has a mechanical failure and cannot be operated as a scheduled service.</i> <i>This approach allows the use of leased aircraft of all types as long as such aircraft meets the applicable safety and security requirements</i>

Article 27 Intermodal services	
Traditional Each designated airline may use intermodal transportation if approved by the aeronautical authorities of both Parties. Transitional Each designated airline may employ their own or use others services for the surface transport of air cargo. Full liberalization [Option 1 of 2] Each designated airline may use surface modes of transport without restriction in conjunction with the international air transport of passengers and cargo. [Option 2 of 2] Notwithstanding any other provision of this Agreement, airlines and indirect providers of cargo transportation of both Parties shall be permitted, without restriction, to employ in connection with international air transportation any surface transportation for cargo to or from any points in the territories of the Parties or in third countries, including transport to and from all airports with customs facilities, and including, where applicable, the right to transport cargo in bond under applicable laws and regulations. Such cargo, whether moving by surface or by air, shall have access to airport customs processing and facilities. Airlines may elect to perform their own surface transportation or to provide it through arrangements with other surface carriers, including surface transportation operated by other airlines and indirect providers of cargo transportation. Such intermodal cargo services may be offered at a single, through price for the air and surface transportation combined, provided that shippers are not misled as to the facts concerning such transportation.	<i>In the traditional approach the filing and approval of intermodal passenger and cargo tariffs (e.g. air/rail, air/truck) implicitly recognized this form of intermodal transport .</i> <i>The transition stage includes such facilities as the use of airport customs facilities for surface cargo, transport under bond, carriage to or from any points in third countries and charging a single price for the intermodal transport (provided the shipper is not misled as to the facts of such transport).</i> <i>The inclusion of passengers and the phrase “without restriction” are the principle differences between the transition and full liberalization stages.</i> <i>This provision is aimed at giving full service, capacity and pricing flexibility as well as access to customs and other facilities, to the various parties in an intermodal shipment of cargo. Such a provision is now inserted in many “open skies” agreements, particularly where the volume of trade by air between the parties warrants such a liberalizing provision.</i>

Article 28 Computer reservation systems (CRS)	
[Option 1 of 3] Each Party shall apply the ICAO Code of Conduct for the Regulation and Operation of Computer Reservation Systems within its territory. [Option 2 of 3] Each Party shall apply the ICAO Code of Conduct for the Regulation and Operation of Computer Reservation Systems within its territory consistent with other applicable regulations and obligations concerning computer reservation systems. [Option 3 of 3] The Parties agree that: a) one of the most important aspects of the ability of an airline to compete is its ability to inform the public of its services in a fair and impartial manner, and that, therefore, the quality of information about airline services available to travel agents who directly distribute such information to the travelling public and the ability of an airline to offer those agents competitive computer reservations systems (CRSs) represent the foundation for an airline's competitive opportunities; and b) it is equally necessary to ensure that the interests of the consumers of air transport products are protected from any misuse of such information and its misleading presentation and that airlines and travel agents have access to effectively competitive computer reservations systems.	<i>Some provisions refer to “designated airlines”. Parties would need to consider whether the provisions on the activities contained in this Article should also be extended to all airlines of a Party rather than only designated ones.</i> <i>This alternative is an ICAO model for use, in particular, by Parties which may not have CRS regulations but are willing to apply the ICAO Code of Conduct for the Regulation and Operation of Computer Reservation Systems (see Doc 9587).</i> <i>This alternative applies the ICAO Code, but it is consistent with any other applicable regulations. (These could include the European Union, the European Civil Aviation Conference and the Arab Civil Aviation Commission CRS Codes, or national regulations. The reference to “obligations” recognizes that some States will apply the provisions of the General Agreement on Trade in Services (GATS) which has an Annex on Air Transport Services applicable to CRSs.)</i> <i>This alternative recognizes that some bilateral agreements set out in considerable detail the applicable principles to govern the regulation and operation of CRSs, usually because only one of the parties has extensive CRS regulations which are reflected in the detailed provisions of this type of article. However, given the rapidly evolving nature of airline product distribution, a less comprehensive approach may be more flexible and more easily applied to current conditions.</i>

Article 29 Ban on smoking	
1. Each Party shall prohibit or cause their airlines to prohibit smoking on all flights carrying passengers operated by its airlines between the territories of the Parties. This prohibition shall apply to all locations within the aircraft and shall be in effect from the time an aircraft commences enplanement of passengers to the time deplanement of passengers is completed. 2. Each Party shall take all measures that it considers reasonable to secure compliance by its airlines and by their passengers and crew members with the provisions of this Article, including the imposition of appropriate penalties for non-compliance.	<i>This Article obligates each Party to prohibit smoking on all passenger flights by its airlines between the Parties, and to take reasonable measures to enforce this ban. The need for this provision would lessen as the practice of prohibiting smoking on flights spreads globally.</i>
Article 30 Environmental Protection	
The Parties support the need to protect the environment by promoting the sustainable development of aviation. The Parties agree with regard to operations between their respective territories to comply with the ICAO Standards and Recommended Practices (SARPs) of Annex 16 and the existing ICAO policy and guidance on environmental protection.	<i>States may wish to consider the inclusion of an aviation environmental clause into their bilateral air services agreements to take into account the impact of air transport industry on the environment.</i>

Article 31 Statistics	
Traditional The aeronautical authorities of each Party shall provide [or cause its designated airline or airlines to provide] the aeronautical authorities of the other Party, [upon request,] periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the capacity provided on the agreed services operated by the designated airline(s) of the first Party. Transitional The aeronautical authorities of both Parties shall supply each other, on request, with periodic statistics or other similar information relating to the traffic carried on the agreed services. Full liberalization	<i>A provision on statistics is usually found in agreements which have either a pre-determination type or a Bermuda I type capacity regime. The principal difference in use of this alternative is that the furnishing of statistics is likely to be mandatory in the case of pre-determination, but “upon request” in the case of Bermuda I. The statistics may be furnished by the aeronautical authority, or alternatively, it may also provide that the designated airlines submit them. When the purpose is to review the capacity on the agreed routes, the origin and destination statistics would be required. Some agreements may specify the periodicity of the traffic period or the submission, such as monthly, if the submission is mandatory.</i> <i>This alternative may also be applied to pre-determination or Bermuda I arrangements but is more simple and does not spell out the purpose of the submission. It is therefore an approach that might be used in more liberal agreements where the need for statistics is not related to capacity control, but rather review.</i> <i>In some such agreements, a Party may require an airline to furnish data with respect to prices (tariff), for example, where there is an allegation of predatory pricing (see Article 17-Pricing (Tariffs)), Dual disapproval, paragraph 2, alternative 2).</i> <i>“Open skies” agreements would not normally require the filing of any statistics.</i>

Article 32 Approval of schedules	
Traditional 1. The designated airline of each Party shall submit its envisaged flight schedules for approval to the aeronautical authorities of the other Party at least thirty (30) days prior to the operation of the agreed services. The same procedure shall apply to any modification thereof. 2. For supplementary flights which the designated airline of one Party wishes to operate on the agreed services outside the approved timetable, that airline must request prior permission from the aeronautical authorities of the other Party. Such requests shall usually be submitted at least two (2) working days prior to the operation of such flights.	<i>This provision is common to traditional agreements where capacity is determined by both Parties in advance. There is a requirement for the designated airlines to submit to the aeronautical authorities, prior to the operation of the services, the agreed flight schedules including timetables, the frequency of the services and the types of aircraft to be used, as well as any modifications or supplementary flights.</i> <i>In some agreements, this provision could be covered in the Capacity Article.</i>

Article 33 Consultations	
Traditional In the spirit of close cooperation, the aeronautical authorities of the Parties shall consult with each other from time to time with a view to ensuring the implementation of and satisfactory compliance with the provisions of this Agreement. Either Party may also request to hold a “High Level” meeting, up to Ministerial level, if and when deemed necessary, to advance the process of consultations. Transitional and Full liberalization 1. Either Party may, at any time, request consultation on the interpretation, application, implementation or amendment of this Agreement or compliance with this Agreement. 2. Such consultations [which may be through discussion or by correspondence], shall begin within a period of 60 [30] days from the date the other Party receives a [written or oral] request, unless otherwise agreed by the Parties.	<i>The consultation provision is normally general in scope and some issues, such as aviation security and safety, but also capacity and tariffs, as well as amendment of the agreement, may be subject to separate and specific consultation processes as regards purpose, time-frames and methods (e.g. exchange of documents).</i> <i>The consultation provision is based on a relatively standardized formula although there are a number of different approaches in wording with regard to the purpose of the consultation, the format of the consultation and the form of the request.</i> <i>In this approach, the consultation process can take the form of a regular process with the alternative to escalate the consultations to higher governmental levels.</i> <i>In this approach, the consultation process can be triggered by a request from either Party to address a specific issue. The “request” rather than the “time to time” formulation is more likely to be used in liberalized or “open skies” agreements, where the need for regular consultation may be considered to be less.</i> <i>The bracketed language in paragraph 2 is found in more recent agreements and takes into account modern communication methods which lessen the need for meetings between personnel of the Parties.</i>

Article 34 Settlement of disputes	
Traditional Diplomatic channels [See alternatively two “Arbitration” approaches below] 1. Any dispute arising between the Parties relating to the interpretation or application of this Agreement [except those that may arise under Article _ (Fair competition), Article _ (Safety), Article _ (Tariffs/Pricing)], the Parties shall in the first place endeavour to settle it by consultations and negotiation. 2. If the Parties fail to reach a settlement by negotiation, the dispute shall be settled through diplomatic channels.	<i>At the bilateral level, the initial and most successful step in all basic approaches to the settlement of disputes is consultations and/or negotiations. Should that process fail to produce an agreement, or the Parties fail to reach a settlement of the dispute, then three alternatives are provided which includes settlement through diplomatic channels, arbitration and mediation, an intermediate step between consultation and arbitration. The three alternatives link the dispute settlement process to the bilateral agreement. (However, a broad, fair and equal opportunity to compete clause has often been used to address situations not specifically covered by the agreement.)</i> <i>This provision takes into account an optional wording where there may be a separate consultation process with regard to the article on fair competition or with regard to the article on safety.</i> <i>This approach relies on diplomatic channels if consultation fails to produce a settlement. It should be recognized that escalating a dispute to higher governmental levels may run the risk of a decision on other than air transport grounds.</i>

Article 34 Settlement of disputes (cont'd)	
Arbitration [See alternatively “Diplomatic channels” above or second “Arbitration” approach below] 1. Any dispute arising between the Parties relating to the interpretation or application of this Agreement [except those that may arise under Article _ (Fair competition), Article _ (Safety), Article _ (Tariffs/Pricing)], the Parties shall in the first place endeavour to settle it by consultations and negotiation. 2. If the Parties fail to reach a settlement through consultations, the dispute may, at the request of either Party, be submitted to arbitration in accordance with the procedures set forth below. 3. Arbitration shall be by a Tribunal of three arbitrators, one to be named by each Party and the third to be agreed upon by the two arbitrators so chosen, provided that the third such arbitrator shall not be a national of either Party. Each Party shall designate an arbitrator within a period of sixty (60) days from the date of receipt by either Party from the other Party of a diplomatic note requesting arbitration of the dispute, and the third arbitrator shall be agreed upon within a further period of sixty (60) days. If either of the Parties fails to designate its own arbitrator within the period of sixty (60) days or if the third arbitrator is not agreed on within the period indicated, the President of the Council of ICAO may be requested by either Party to appoint an arbitrator or arbitrators. If the President is of the same nationality as one of the Parties, the most senior Vice-President who is not disqualified on that ground shall make the appointment.	<i>Should the process of consultations fail to produce an agreement, or the Parties fail to reach a settlement of the dispute, then this approach relies on settling disputes through arbitration. The arbitration process in bilateral air services agreements has rarely been used in practice, in part because of its costs and the time involved, though also because most disputes do not get beyond the stage of negotiation.</i> <i>The arbitration process is to provide for the establishment of a three-person arbitration tribunal.</i>

Article 34 Settlement of disputes (cont'd)	
Arbitration (cont'd) [See alternatively “Diplomatic channels” above or second “Arbitration” approach below] (cont'd) 4. The arbitration tribunal shall determine its own procedure. [Paragraph 5, option 1 of 2] 5. Each Party shall [to the degree consistent with its national law] give full effect to any decision or award of the tribunal. [Paragraph 5, option 2 of 2] 5. The decision of the tribunal shall be binding on the Parties. [Paragraph 6, option 1 of 2] 6. The expenses of the tribunal shall be shared equally between the Parties. [Paragraph 6, option 2 of 2] 6. Each Party shall bear the costs of the arbitrator appointed by it. The other costs of the tribunal shall be shared equally by the Parties, including any expenses incurred by the President of the Council of ICAO in implementing the procedures in paragraph 3 of this Article. 7. If and so long as either Party fails to comply with any decision given under paragraph 3, the other Party may limit, withhold or revoke any rights or privileges which it has granted by virtue of this agreement to the Party in default or to the designated airline or airlines in default.	<i>This alternative leaves it to the tribunal to establish its own procedures.</i> <i>There are different approaches possible on the implementation of a tribunal decision. The arbitral tribunal may hold a conference on the issues to be decided, receive written and oral testimony from both Parties, establish a schedule for reaching a decision, and issue interpretations thereof; and a majority of the tribunal will be sufficient to issue a decision.</i> <i>There are a number of variations as to the division of the expenses. For example, both Parties may equally share the expenses of the tribunal, or each Party may bear the costs of the arbitrator it appoints and share the other costs of the tribunal.</i>

Article 34 Settlement of disputes (cont'd)	
Arbitration (cont'd) [See alternatively, “Diplomatic channels” or first “Arbitration” approach above] 1. Any dispute arising between the Parties relating to the interpretation or application of this Agreement [except those that may arise under Article _ (Fair competition), Article _ (Safety), Article _ (Tariffs/Pricing)], the Parties shall in the first place endeavour to settle it by consultations and negotiation. 2. If the Parties fail to reach a settlement through consultations, the dispute may, at the request of either Party, be submitted to arbitration in accordance with the procedures set forth below. 3. Arbitration shall be by a Tribunal of three arbitrators, one to be named by each Party and the third to be agreed upon by the two arbitrators so chosen, provided that the third such arbitrator shall not be a national of either Party. Each Party shall designate an arbitrator within a period of sixty (60) days from the date of receipt by either Party from the other Party of a diplomatic note requesting arbitration of the dispute, and the third arbitrator shall be agreed upon within a further period of sixty (60) days. If either of the Parties fails to designate its own arbitrator within the period of sixty (60) days or if the third arbitrator is not agreed on within the period indicated, the President of the Council of ICAO may be requested by either Party to appoint an arbitrator or arbitrators. If the President is of the same nationality as one of the Parties, the most senior Vice-President who is not disqualified on that ground shall make the appointment.	<i>Should the process of consultations fail to produce an agreement, or the Parties fail to reach a settlement of the dispute, then this approach relies on settling disputes through arbitration. The arbitration process in bilateral air services agreements has rarely been used in practice, in part because of its costs and the time involved, though also because most disputes do not get beyond the stage of negotiation.</i> <i>The arbitration process is to provide for the establishment of a three-person arbitration tribunal.</i>

Article 34 Settlement of disputes (cont'd)	
Arbitration (cont'd) [See alternatively, “Diplomatic channels” or first “Arbitration” approach above] 4. Except as otherwise agreed, the arbitration tribunal shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedure. At the direction of the tribunal or at the request of either of the Parties, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held no later than fifteen (15) days after the tribunal is fully constituted. 5. Except as otherwise agreed by the Parties or prescribed by the tribunal, each Party shall submit a memorandum within forty-five (45) days of the time the tribunal is fully constituted. Replies shall be due sixty (60) days later. The tribunal shall hold a hearing at the request of either Party or at its discretion within fifteen (15) days after replies are due. 6. The tribunal shall attempt to render a written decision within thirty (30) days after completion of the hearing or, if no hearing is held, after the date both replies are submitted. The decision of the majority of the tribunal shall prevail. 7. The Parties may submit requests for clarification of the decision within fifteen (15) days after it is rendered and any clarification given shall be issued within fifteen (15) days of such request.	<i>This alternative leaves it to the tribunal to establish its own procedures, including the appointment process for the arbitrators, with time-frames, to be followed.</i>

Article 34 Settlement of disputes (cont'd)	
Arbitration (cont'd) [See alternatively, “Diplomatic channels” or first “Arbitration” approach above] [Paragraph 8, option 1 of 2] 8. Each Party shall [to the degree consistent with its national law] give full effect to any decision or award of the tribunal. [Paragraph 8, option 2 of 2] 8. The decision of the tribunal shall be binding on the Parties. [Paragraph 9, option 1 of 2] 9. The expenses of the tribunal shall be shared equally between the Parties. [Paragraph 9, option 2 of 2] 9. Each Party shall bear the costs of the arbitrator appointed by it. The other costs of the tribunal shall be shared equally by the Parties, including any expenses incurred by the President of the Council of ICAO in implementing the procedures in paragraph 4 of this Article. 10. If and so long as either Party fails to comply with any decision given under paragraph 3, the other Party may limit, withhold or revoke any rights or privileges which it has granted by virtue of this agreement to the Party in default or to the designated airline or airlines in default.	

Article 34 Settlement of disputes (cont'd)	
Transitional and Full liberalization 1. Any dispute arising between the Parties relating to the interpretation or application of this Agreement [except those that may arise under Article _ (Fair competition), Article _ (Safety), Article _ (Tariffs/Pricing)], the Parties shall in the first place endeavour to settle it by consultations and negotiation. 2. Any dispute which cannot be resolved by consultations, may at the request of either Party to the agreement be submitted to a mediator or a dispute settlement panel. Such a mediator or panel may be used for mediation, determination of the substance of the dispute or to recommend a remedy or resolution of the dispute.	<i>This alternative developed by ICAO is to address those commercial disputes, such as on pricing, capacity and other competitive practices that arise in a liberalized environment. It could also be used to address disputes beyond unfair practices, for example, disputes related to market access in a less regulatory controlled environment. The mechanism is deliberately broader in scope and could apply to issues not specifically included in the bilateral agreement. It is not intended as a substitute for the formal arbitration process, but rather as a means to resolve disputes in a relatively simple, responsive and cost-effective manner.</i> <i>The normal consultation process may resolve such disputes but could also have the effect of prolonging an unfair competitive practice to the commercial detriment of one or more airlines. Consequently, this procedure, which is less formal and time consuming than arbitration, is designed, by means of a panel, to reach a resolution through mediation, fact finding or decision, using the services of an expert or experts in the subject matter of the dispute. The primary objective is to enable the Parties to restore a healthy competitive environment in the airline market place as expeditiously as possible.</i> <i>“Open skies” agreements also include a similar recourse to refer disputes “for decision to some person or body”.</i>

Article 34 Settlement of disputes (cont'd)		
	Transitional and Full liberalization (cont'd)	
3. The Parties shall agree in advance on the terms of reference of the mediator or of the panel, the guiding principles or criteria and the terms of access to the mediator or the panel. They shall also consider, if necessary, providing for an interim relief and the possibility for the participation of any Party that may be directly affected by the dispute, bearing in mind the objective and need for a simple, responsive and expeditious process. 4. A mediator or the members of a panel may be appointed from a roster of suitably qualified aviation experts maintained by ICAO. The selection of the expert or experts shall be completed within fifteen (15) days of receipt of the request for submission to a mediator or to a panel. If the Parties fail to agree on the selection of an expert or experts, the selection may be referred to the President of the Council of ICAO. Any expert used for this mechanism should be adequately qualified in the general subject matter of the dispute. 5. A mediation should be completed within sixty (60) days of engagement of the mediator or the panel and any determination including, if applicable, any recommendations, should be rendered within sixty (60) days of engagement of the expert or experts. The Parties may agree in advance that the mediator or the panel may grant interim relief to the complainant, if requested, in which case a determination shall be made initially. 6. The Parties shall cooperate in good faith to advance the mediation and to be bound by any decision or determination of the mediator or the panel, unless they otherwise agreed. If the Parties agree in advance to request only a determination of the facts, they shall use those facts for resolution of the dispute.		<i>The mechanism requires the Parties to agree in advance on such matters as the purpose of the panel, viz its terms of reference and procedure, and in particular whether the panel is permitted to grant any interim or injunctive relief to the complainant. Such relief could take the form, for example, of a temporary freeze or reversion to the status quo ante.</i> <i>The two important time-frames built in to the mechanism are 15 days for selection of the experts to constitute the panel, and 60 days for the rendering of a decision or determination. Thus the emphasis is on minimizing legal formalities and procedural time-frames, yet allowing adequate time for the panel to arrive at a decision or determination.</i>

Article 34 Settlement of disputes (cont'd)		
Transitional and Full liberalization (cont'd)		
7. The costs of this mechanism shall be estimated upon initiation and apportioned equally, but with the possibility of re-apportionment under the final decision. 8. The mechanism is without prejudice to the continuing use of the consultation process, the subsequent use of arbitration, or Termination under Article _. 9. If the Parties fail to reach a settlement through mediation, the dispute may, at the request of either Party, be submitted to arbitration in accordance with the procedures set forth below.		<i>The use of the mechanism does not preclude the implementation of the arbitration process if that is also provided for in the agreement and if the above mechanism has failed to resolve the dispute to the satisfaction of one or more Parties. Nevertheless, it may be expected that the subsequent use of arbitration should be unnecessary if the Parties have committed to this complementary procedure for resolving certain kinds of commercial and time sensitive disputes.</i> <i>The arbitration procedures are the same as outlined in the traditional text.</i>

Article 35 Amendments	
1. Either Party may at any time request consultation with the other Party for the purpose of amending the present Agreement [or its Annex] [or its Route Schedule]. Such consultation shall begin within a period of sixty (60) days from the date of receipt of such request. [Such consultations may be conducted through discussion or by correspondence.] 2. Any amendment shall enter into force when confirmed by an exchange of diplomatic notes. [Paragraph 3, option 1 of 2] 3. Any amendment of the [Annex] [Route schedule] may be made by written agreement between the aeronautical authorities of the Parties and shall come into force when confirmed by an exchange of diplomatic notes. [Paragraph 3, option 2 of 2] 3. Any amendments of this Agreement agreed by the Parties shall come into effect when confirmed by an exchange of diplomatic notes.	<i>The amendment or modification provision in an agreement may take a variety of forms. The variety arises because of differing treatment of air services agreements (whether treaty or executive agreement) and the differing constitutional procedures applied to the approval of such agreements and their amendments. Sometimes the amendment process in an agreement is dealt with in the context of the consultation provision since the negotiation of an amendment may be seen as merely another matter for consultation.</i> <i>This alternative takes a more detailed approach. It includes a time frame of 60 days for the start of the consultations; optional wording at the end of paragraph 1 enables the consultation process to be in writing.</i> <i>As regards the date of coming into force, practices differ widely, although the most common approach is to give effect to amendments when there has been an exchange of diplomatic notes.</i> <i>In order to provide greater flexibility for amending the route schedule, paragraph 3 allows the consultation and amendment process to take place between the aeronautical authorities.</i> <i>This alternative takes a more simple approach and does not address the amendment procedure, it simply addresses the coming into force of any agreed amendment. In such an approach it would be presumed that the amendment procedure to be followed would be that of the agreement's general consultation process.</i>

Article 36 Multilateral agreements	
[Option 1 of 2] If a multilateral agreement concerning air transport comes into force in respect of both Parties, the present Agreement shall be [deemed to be] amended so as [so far as is necessary] to conform with the provisions of that multilateral agreement. [Option 2 of 2] If both Parties become parties to a multilateral agreement that addresses matters covered by this agreement, they shall consult to determine whether this agreement should be revised to take into account the multilateral agreement.	<i>This provision concerning the effect on the bilateral agreement of any multilateral agreement that may come into effect for both Parties has been inserted in most bilateral agreements over the years in anticipation of progress towards a broad multilateral air transport agreement for the exchange of traffic rights; in the absence of such an agreement it nevertheless continues to be relevant with respect to more limited regional and plurilateral agreements.</i> <i>From the bilateral perspective there are at least two options for taking into account that Parties to a bilateral may subsequently become Parties to a multilateral agreement that deals with the same matters as the bilateral: either amend the bilateral to conform to the multilateral or consult on whether this needs to be done. (Different options are presented from the multilateral perspective; these are discussed in the Regional/Plurilateral TASA).</i> <i>The unbracketed text in this alternative commits the Parties to amend the bilateral to conform the multilateral agreement using the normal amendment procedure. The bracketed text eliminates the need for the normal amendment procedure but adds a limitation “so far as is necessary” on the extent of amendment of the bilateral.</i> <i>This alternative allows the Parties to decide, after consultations, whether the bilateral should be revised to take into account the multilateral agreement.</i>

Article 37 Termination	
Either Party may, at any time, give notice in writing, through diplomatic channels, to the other Party of its [intention] [decision] to terminate this Agreement. Such notice shall be simultaneously communicated to ICAO. This Agreement shall terminate [at midnight (at the place of receipt of the notice) immediately before the first anniversary of] [twelve months after] the date of receipt of the notice by the other Party, unless the notice is withdrawn by agreement before the end of this period. [In the absence of acknowledgement of receipt by the other Party, the notice shall be deemed to have been received fourteen (14) days after receipt of the notice by ICAO].	<i>The termination or withdrawal provision (also called denunciation) is fairly standard in format although some variations in wording exist. The main variation is the optional wording in brackets, in the final sentence, to cover a situation where the Party receiving the notice of termination does not acknowledge receipt - in that case receipt is deemed to have taken place 14 days after receipt of the notice by ICAO. Termination provisions normally require 12 months notice before the termination comes into effect although a shorter period may be agreed.</i>
Article 38 Registration with ICAO	
[Option 1 of 2] This Agreement and any amendment thereto shall be registered upon its signature with the International Civil Aviation Organization by <i>(name of the registering Party)</i>. [Option 2 of 2] This Agreement and any amendment thereto shall be registered upon its entry into force with the International Civil Aviation Organization by [name of the Registering Party].	<i>Articles 81 and 83 of the Convention obligate States to register their aeronautical agreements and the above provision formalizes this requirement at the bilateral level. However, in practice, many agreements and amendments are not registered, a fact which has a negative impact on the transparency of the whole process. This clause developed by ICAO includes the requirement to register, upon signature (option 1) or entry into force (option 2), the name of the Party responsible for registering the agreement and is intended to encourage better compliance with the registration requirement.</i>

Article 39 Entry into force	
[Option 1 of 2] This Agreement shall [be applied provisionally from the date of its signature and shall] enter into force [thirty (30) days after both Parties have notified each other through diplomatic channels that their constitutional procedures for the entry into force of this agreement have been completed] [from the date on which the exchange of diplomatic notes between the Parties has been completed]. [Option 2 of 2] This Agreement shall enter into force on the date of signature.	<i>The two basic approaches to an entry into force provision presented above involve, in the first alternative, an anticipated ratification process and, in the second alternative, a simple and immediate entry into force upon signature. In the former the Parties may wish to allow for protracted constitutional formalities by enabling the agreement to provisionally enter into force upon signature. There are a number of formulae for the date of entry into force following such formalities and two are included in the first alternative. The choices made on the wording of this final provision will largely depend on the respective national processes of the Parties for giving effect to their air services agreements.</i>

Annex I Route schedules (cont'd)	
Full liberalization [Option 1 of 2] A. Routes to be operated by the designated airline (or airlines) of Party A: Points to, from and within the territory of Party B. B. Routes to be operated by the designated airline (or airlines) of Party B: Points to, from and within the territory of Party A. Section 2 Operational flexibility The designated airlines of either Party may, on any or all flights and at its option: 1. operate flights in either or both directions; 2. combine different flight numbers within one aircraft operation; 3. serve intermediate and beyond points in the territories of the Parties on the routes in any combination and in any order; 4. omit stops at any point or points; 5. transfer traffic (including codesharing operations) from any of its aircraft to any of its other aircraft at any point on the routes; and 6. serve points behind any point in its territory with or without change of aircraft or flight number and may hold out and advertise such services to the public as through services; without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under the present Agreement; provided that, (with the exception of all-cargo services) the service serves a point in the territory of the Party designating the airlines.	Full liberalization opens all international as well as the domestic markets of the parties. European Community air carriers have this type of market access within the European Union. Some of these provisions may be relevant to only one or more approach(es). Notwithstanding Article _(Change of Gauge) of this Agreement, airlines shall be permitted to transfer traffic between aircraft involved in codesharing operations without limitation.

Annex I Route schedules (cont'd)	
Full liberalization (cont'd) [Option 2 of 2] 1. The designated airlines of each Party shall be entitled to perform air services, whether for the carriage of passengers, cargo, mail or in combination, across, to, from or within the territory of the other Party, without limitation as to route, capacity or frequency. 2. The designated airlines of each Party shall be entitled without limitation to exercise traffic rights on all services and combinations of services.	<i>Option 2 provides for full liberalization including cabotage</i>

Annex II Non-scheduled/Charter operations	
Traditional 1. The provisions of this Agreement, except those dealing with Traffic Rights, Capacity and Tariffs shall be applicable also to non-scheduled flights operated by an air carrier of one Party into or from the territory of the other Party and to the air carrier operating such flights. [Paragraph 2, option 1 of 2] 2. The provisions of paragraph 1 of this Article shall not affect national laws and regulations governing the authorization of non-scheduled operations or to the conduct of air carriers or other parties involved in the organization of such operations.	<i>A provision on non-scheduled operations may be dealt with in a variety of ways and contexts in an agreement. Basically it may be treated as a grant of rights matter or a matter for separate regulatory attention. It may be in the body of the Agreement or in an Annex.</i> <i>A simpler and more direct approach to the grant of rights for non-scheduled operations would be simply to refer in the grant of rights article to the conduct of “international air services” scheduled and non-scheduled. In this way all the provisions of the agreement would be applicable to both scheduled and non-scheduled services.</i> <i>This approach may be used when the Parties anticipate the possibility of non-scheduled operations, need to identify the various administrative and commercial opportunity provisions that would be applied to those operations, but wish to take no position on whether authorization would be granted under their respective national laws and regulations. This provision makes clear that the provisions of the main agreement other than those designed for scheduled air services will apply to non-scheduled air services. Alternatively, this clause could list the Articles in the main agreement that would apply to non-scheduled services, e.g. User Charges, Customs Duties, Safety, Security, etc.</i> <i>The provision leaves to Each Party’s national law and regulation the determination of which non-scheduled services would be permitted and under what conditions.</i>

Annex II Non-scheduled/Charter operations (cont'd)	
Traditional [Paragraph 2, option 2 of 2] 2. Each Party shall give sympathetic consideration to applications for [non-scheduled flights] [charter flights] between their territories for passengers and cargo in accordance with their respective laws and regulations. Transitional [Option 1 of 3] 1. Each Party shall authorize non-scheduled passenger flights between points at which no established scheduled air services exist. In cases where such scheduled services exist, authorizations shall be granted provided the offer of non-scheduled flights does not endanger the economic stability of existing scheduled services. 2. When series of non-scheduled passenger flights are requested, these must correspond to the definition of “inclusive package tours” and must be carried out on a round trip basis, with pre-established departures and returns.	<i>The requirement to give “sympathetic consideration” is not a grant of market access but implies a positive treatment to non-scheduled operations in general or, more specifically charter flights. This provision also reflects the fact that the regulatory regime governing authorization for such operations is generally unilateral, with the destination State or States applying their national rules to any applicant.</i> <i>This approach has no adverse impact on scheduled services.</i> <i>Historically, many States were concerned with preventing non-scheduled passenger services from having an adverse impact on scheduled services and a wide variety of policies and mechanisms were developed to address this issue (see Doc 9587). Three such mechanisms are contained in this text: 1) authorizing non-scheduled passenger services between points not served by scheduled services (usually referred to as “off-route charters”) 2) not permitting non-scheduled passenger services which would adversely impact on scheduled services, and 3) authorizing types of non-scheduled passenger services (in this case inclusive tour charters which include a ground package of services such as hotels, land transport, etc in addition to air transport) which are not regarded as endangering the economic viability of scheduled services.</i>

Annex II Non-scheduled/Charter operations (cont'd)	
Transitional [Option 2 of 3] 1. The airlines of each Party designated pursuant to this Agreement to operate under this Annex shall have the right to operate non-scheduled international air transport over the routes specified and in accordance with the rights granted for scheduled services in this Agreement. 2. Each Party shall extend favourable consideration to applications by airlines of the other Party to carry traffic not covered by this Annex on the basis of comity and reciprocity. [Option 3 of 3] 1. The [designated] airlines of one Party shall [, in accordance with the terms of their designation and of the Route Schedule at Annex _ ,] be entitled to perform international non-scheduled air transportation to and from any point or points in the territory of the other Party, either directly or with stop-overs en route, for one-way or round trip carriage of any traffic to or from a point or points in the territory of the Party which has designated the airline. Multi-destination charters shall also be permitted. In addition, [designated] airlines of one Party may operate charters with traffic originating in or destined for the territory of the other Party.	<i>This transitional approach opens the routes in the agreement to non-scheduled services, under the same conditions (e.g. change of gauge) for scheduled services, while off-route non-scheduled services are approved/disapproved on the basis of comity and reciprocity. Depending on the grant of rights for scheduled services this would normally open non-scheduled services to both passengers and cargo.</i> <i>The use of “comity and reciprocity” results in the amount and type of off-route charters being based on the Party with the most restrictive view of such charters.</i> <i>In this approach, although the regulatory regime governing non-scheduled operations, and particularly charter type operations, is usually that of the destination State, the Parties to some agreements may choose to stipulate that the rules of the country of origin of the operation should be applied. This should facilitate the conduct of these operations. This is therefore an example of such an arrangement which could be used in a liberal agreement, though it nevertheless requires compliance with rules.</i> <i>Paragraph 1 spells out a broad market access for these operations whereas the second paragraph applies the country of origin rules.</i>

Annex II Non-scheduled/Charter operations (cont'd)	
Transitional (cont'd) [Option 3 of 3] (cont'd) 2. Each [designated] airline performing air transportation under this provision shall comply with such laws, regulations and rules of the Party in whose territory the traffic originates, whether on a one-way or round-trip basis, as that Party now or hereafter specifies shall be applicable to such transportation. Full liberalization Section 1 Airlines of each Party designated under this Annex shall, in accordance with the terms of their designation, have the right to carry international charter traffic of passengers (and their accompanying baggage) and/or cargo (including, but not limited to, freight forwarder, split, and combination (passenger/cargo) charters): Between any point or points in the territory of the Party that has designated the airline and any point or points in the territory of the other Party; and Between any point or points in the territory of the other Party and any point or points in a third country or countries, provided that, except with respect to cargo charters, such service constitutes part of a continuous operation, with or without a change of aircraft, that includes service to the homeland for the purpose of carrying local traffic between the homeland and the territory of the other Party.	<i>The text with bracketed language is used where the Route schedule at Annex___is not city specific and where the Parties designate airlines for non-scheduled services. Without the bracketed language all airlines of each Party (whether or not they are also designated for scheduled services) would be authorized by the other Party to perform the non-scheduled services described in the first paragraph.</i> <i>The full liberalization approach is an option for States which might wish to liberalize non-scheduled services while continuing to regulate scheduled services. This approach may be found in liberal or “open skies” agreements. Its conditions are minimal.</i> <i>It equates non-scheduled with scheduled services in terms of rights and market access, and without the necessity of compliance with the national regulations of the destination Party, but in the first paragraph limits this to the designated airlines of each party. It also contains a provision for favourable consideration to be given to non-scheduled operations not covered by the rights granted under the first paragraph, for example, services by airlines not designated to provide scheduled services or seventh freedom passenger services.</i> <i>A difference between the previous transitional approach and full liberalization is the ability of the designated airline to choose either the charter rules of its own country or that of the other Party for the operation of its non-scheduled services.</i>

Annex II	
Non-scheduled/Charter operations (cont'd)	
Full liberalization (Cont'd)	
In the performance of services covered by this Annex, airlines of each Party designated under this Annex shall also have the right: (1) to make stopovers at any points whether within or outside of the territory of either Party; (2) to carry transit traffic through the other Party's territory; (3) to combine on the same aircraft traffic originating in one Party's territory, traffic originating in the other Party's territory, and traffic originating in third countries; and (4) to perform international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated; provided that, except with respect to cargo charters, in the outbound direction, the transportation beyond such point is a continuation of the transportation from the territory of the Party that has designated the airline and in the inbound direction, the transportation to the territory of the Party that has designated the airline is a continuation of the transportation from beyond such point. Each Party shall extend favourable consideration to applications by airlines of the other Party to carry traffic not covered by this Annex on the basis of comity and reciprocity.	
Section 2	
Any airline designated by either Party performing international charter air transportation originating in the territory of either Party, whether on a one-way or round-trip basis, shall have the option of complying with the charter laws, regulations, and rules either of its homeland or of the other Party. If a Party applies different rules, regulations, terms, conditions, or limitations to one or more of its airlines, or to airlines of different countries, each designated airline shall be subject to the least restrictive of such criteria.	

Annex II Non-scheduled/Charter operations (cont'd)	
Full liberalization (cont'd) Section 2 (cont'd) However, nothing contained in the above paragraph shall limit the rights of either Party to require airlines designated under this Annex by either Party to adhere to requirements relating to the protection of passenger funds and passenger cancellation and refund rights. Section 3 Except with respect to the consumer protection rules referred to in the preceding paragraph above, neither Party shall require an airline designated under this Annex by the other Party, in respect of the carriage of traffic from the territory of that other Party or of a third country on a one-way or round-trip basis, to submit more than a declaration of conformity with the applicable laws, regulations and rules referred to under section 2 of this Annex or of a waiver of these laws, regulations, or rules granted by the applicable aeronautical authorities.	

Annex III Air cargo services	
Transitional 1. Every designated airline when engaged in the international transport of air cargo a) shall be accorded non-discriminatory treatment with respect to access to facilities for cargo clearance, handling, storage, and facilitation; b) subject to local laws and regulations may use and/or operate directly other modes of transport; c) may use leased aircraft, provided that such operation complies with the equivalent safety and security standards applied to other aircraft of designated airlines; d) may enter into cooperative arrangements with other air carriers including, but not limited to, codesharing, blocked spaced, and interlining; and e) may determine its own cargo tariffs which shall not be required to be filed with the aeronautical authorities of either Party.	<i>Some agreements provide no specific provision on all-cargo operations as the right to operate all-cargo services is usually implicit in the grant of rights wherein the Parties typically grant the right for their designated airlines to transport passengers, cargo and mail on the agreed scheduled international air services. However, other agreements are more specific, referring to “passengers, cargo and mail or in any combination”. The agreement may in the route schedule specify particular routes, including restrictions or flexibility as agreed, for all-cargo services, or the routes may be those exchanged for scheduled passenger services.</i> <i>The purpose of this paragraph is to achieve a fair competitive balance between all air carriers engaged in the transport of international air cargo. Where the main agreement contains a provision which also appears in the Annex (for example, leasing), that provision should be omitted from the Annex.</i>

Annex III Air cargo services (cont'd)	
Transitional (cont'd) 2. In addition to the rights in paragraph 1 above, every designated airline when engaged in all cargo transportation as scheduled or non-scheduled services may provide such services to and from the territory of each Party, without restriction as to frequency, capacity, routing, type of aircraft, and origin or destination of cargo. Full liberalization	<i>This paragraph provides the Third through the Seventh Freedoms of the air for only all-cargo services operated on a scheduled or non-scheduled basis. The first two Freedoms ✎ overflight and technical stops ✎ are not included as they are normally provided in the main agreement. Operational flexibility is described in general terms and includes those elements generally regarded as important for all cargo operations.</i> <i>The Annex on air cargo services is unlikely to be used in full liberalization and more recent “open skies” agreements in which the rights and operational flexibility in this Annex will be in the main agreement.</i>

Annex IV Transitional measures	
The following transitional measures shall expire on (date), or such earlier date as is agreed upon by the Parties: 1. Notwithstanding the provisions of Article ____ (or Annex ____), the designated airline (or airlines) of Party A (or each Party) may (shall) 2. Notwithstanding the provisions of Article ____ (or Annex ____), the designated airline (or airlines) of Party A (or each Party) may (shall) as follows: a) From (date) through (date),; and b) From (date) through (date), 3. Notwithstanding the provisions of Article ____ (or Annex ____), the following provisions shall govern	<i>The Annex is an ICAO recommendation which addresses the issues of participation as well as sustainability in moving towards liberalization. It is drawn from existing practices and approaches covering both participation and preferential measures. It consists of one or more of three types of clauses. If these clauses apply to each Party in the same manner, then they would be considered to be participation measures. If not, then they would be regarded as preferential measures.</i> <i>In giving effect to the three clauses of the Annex, the following three paragraphs of the Explanatory notes, excluding the examples given, could be made part of the Annex.</i> <i>The first clause would be used when a particular Article (or Annex) would not take effect immediately but be implemented in a limited way during the transition period. By way of example, the Parties would agree that, notwithstanding the Annex on Route schedules granting each Party unlimited Fifth Freedom rights, the airline(s) of one Party (the developed State) would not be permitted to exercise those local traffic rights fully between the other Party (the developing State) and a third State until a specified date.</i> <i>The second clause would be similar to the first clause but with phase-in periods. For example, the Parties would agree that, notwithstanding an Article allowing unlimited codesharing, the airlines of each Party would be permitted to expand their third-country codeshare services (frequencies) only in a gradual manner for specified periods.</i> <i>The third clause would be used when an Article (or Annex) would not take effect immediately and a different scheme would be applied during the transition period. For example, the Parties would agree that, notwithstanding a tariff Article with a double disapproval regime, a country-of-origin regime would govern pricing until a specific date.</i>

Annex IV Transitional measures (cont'd)	
	<i>The following is an indicative list of subjects that States may use at their discretion as transitional measures in the Annex: the number of designated airlines, ownership and control criteria, capacity and frequency, routes and traffic rights, codesharing, charter operations, intermodal services, tariffs, slot allocation and “doing business” matters such as ground handling. The language in the Annex is a framework, into which the Parties would need to agree on the terms and wording. ICAO Doc 9587 contains material on possible participation and preferential measures.</i>

Annex V Essential Service and Tourism Development Routes	
1. A Party, following consultations with (or after having consent of) the other Party and after having informed an airline or airlines operating on the route, may specify an essential air service route or an essential tourism development route linking a point in a remote or peripheral area or a development area in its territory with a point in the territory of the other Party. On such route or a group of routes, an adequate level of air services set forth in Paragraph 2 of this Annex shall be considered vital for the protection of the lifeline provision for or the economic development of an area, [including tourism route development], but would not be provided if airlines solely considered their commercial interest [or could be provided solely at unreasonably discriminatory, unduly high or restrictive prices]. 2. The Party having specified an essential air service route or an essential tourism development route shall assess an adequate level of scheduled air services [on each route or a group of routes][in a flexible and market-oriented manner], taking into consideration, <i>inter alia</i>, the particular needs for scheduled air services on the route concerned; the level of demand; the availability of connecting air services, third country airlines, non-scheduled operators and other forms of transport; air fares and conditions; and the effect on all airlines operating or intending to operate on the route and adjacent routes. [Non-scheduled air services may also be considered adequate, provided they meet the terms set forth in Paragraph 1 of this Annex.]	<i>The application of an Essential Service and Tourism Development Routes (ESTDR) scheme presupposes the existence of, or the transitional process to a liberalized international market. In exceptional cases the scheme could be applied to non-liberalized routes with tourism potential, as traditional-type air services agreements already provide implicit assistance to operations on such routes by limiting the scope of competition.</i> <i>The Annex gives legal certainty to the parties involved in implementing an ESTDR scheme and also allows a Party to exercise flexibility in how they interpret and administer, for example, the criteria for the route selection and adequate service levels, the tendering procedure for carrier selection, and the contents of contractual arrangements.</i> <i>An example of the flexible approach is to set minimum requirement of capacities only, leaving the airline to decide frequencies, aircraft types, tariffs, etc. Capacity requirements could be defined in terms of numbers of seats from the origin(s) to the destination(s) as X “units of carriage” per week over part or all of the tourism season.</i>

Annex V Essential Service and Tourism Development Routes (Cont'd)	
3. [Notwithstanding the provisions of Article ____ (Capacity) and Article ____ (Pricing)], the Party concerned, following consultations with (or after having consent of) the other Party, may require an airline operating or intending to operate on an essential air service route or an essential tourism development route to provide air services satisfying the adequate level for a period of up to ____ years. [The Party may require an airline wishing to terminate, suspend or reduce an existing service on the route below an adequate level to file notice at least ____ days prior to the proposed service reduction.] 4. Notwithstanding the provisions of [Article ____ (Capacity), Article ____ (Pricing) and] Annex ____ (Route schedules), if no airline has assumed or is about to assume air services at the adequate level [individually or in the aggregate] on an essential air service route or an essential tourism development route, the Party concerned may invite applications to provide such services, and if necessary and following consultations with (or after having consent of) the other Party, may limit access to that route to only one airline [excluding airlines of third countries] for a period of up to ____ years, and/or provide the payment of subsidy compensation to the airline. The right to operate such services shall be offered by public tender [either singly or for a group of such routes] to any designated airline entitled to operate [and market] its service between the territories. [Airlines of third countries eligible to operate on the route shall also have the right to tender]. 5. The invitation to tender and subsequent contract shall cover, <i>inter alia</i>, the following information: the required level and standard of services set forth in Paragraph 2 of this Annex; the period of validity of the contract; rules concerning amendment, termination or review of the contract, in particular to take account of unforeseeable changes; and penalties in the event of failure to comply with the contract.	<i>The optional text requires an incumbent airline to file an advance notice of its intention to withdraw or reduce services on the route.</i> <i>The model explicitly provides three options for support: a) a guarantee of a monopoly operation with a subsidy, b) a guarantee of a monopoly without a subsidy, or c) a subsidy without a guarantee of a monopoly operation.</i> <i>It is important to note, that regardless of the duration of the contract, the ESTDR application would not be permanent but transitional or only for a reasonable period of time (mostly for a start-up period) especially on routes serving “development areas”. For instance, if the public demand goes up as a result of network development or through the improvement of the aviation infrastructure, it will make the route less likely a natural monopoly and with no need for regulation.</i>

Annex V Essential Service and Tourism Development Routes (Cont'd)	
6. The selection of an airline shall be made within a period of ___ months by the Party having issued the invitation of tender, taking into consideration, <i>inter alia</i>, applicants' financial viability, proposed business plan, ways to develop partnerships with the tourism sector, air fares and conditions, and the amount of the compensation required, if any. 7. The Party having issued the invitation of tender may reimburse an airline, which has been selected under Paragraph 6 of this Annex, for the losses as a result of the required operation at the adequate level in accordance with the contract. Such reimbursement shall be assessed as the [expected] shortfall between costs and revenues generated by the service with a reasonable remuneration for capital employed. [No additional subsidy shall be paid for services above the adequate level that the airline may choose to undertake.] 8. Consultations between the Parties shall be arranged in accordance with Article ___ (Consultation) whenever either Party considers that the selection of and/or compensation for an airline are inconsistent with the considerations set forth in Paragraphs 6 and 7 of this Annex, or that the development of and competition on a route is being unduly restricted by the terms of this Annex. [If the Parties fail to reach a resolution of the problem through consultations, either Party may invoke the dispute settlement mechanism under Article ___ (Settlement of disputes) to resolve the dispute.]	<i>The inclusion of both ex ante and ex post facto review-style consultations between States and/or the requirement of getting an advance agreement from other State(s) could be an effective deterrent against a potential risk that each State would favour its national airlines and use the scheme excessively.</i>

— END —

REGIONAL OR PLURILATERAL TEMPLATE AIR SERVICES AGREEMENT

Throughout this document:

1) an asterisk is used to indicate that a specific provision within an article is common to each of the traditional, transitional and full liberalization approaches. No asterisk appears if the whole article applies to all three approaches. However in some articles, such as “Designation and authorization”, the provision is reproduced in full for each approach for purposes of readability and clarity of the Article;

2) in an article which provides for more than one approach, i.e. traditional, transitional, full liberalization, the same sequential order of presentation is maintained down the page, for ease of readability;

3) similarly, where there are options within an approach (for example, two options within the transitional approach) these are also provided separately, but not in any order of priority.

Table of Contents

	<i>Page</i>
Preamble	3
Article 1 - Definitions	5
Article 2 - Grant of rights	7
Article 3 - Designation and authorization	12
Article 4 - Withholding, revocation and limitation of authorization	17
Article 5 - Application of laws	21
Article 6 - Direct transit	22
Article 7 - Recognition of certificates	23
Article 8 - Safety	24
Article 9 - Aviation security	26
Article 10 - Security of travel documents	28
Article 11 - Inadmissible and undocumented passengers and deportees	29
Article 12 - User charges	30
Article 13 - Custom duties	32
Article 14 - Taxation	34
Article 15 - Fair competition	36
Article 16 - Capacity	37
Article 17 - Pricing (Tariffs)	39
Article 18 - Safeguards	40
Article 19 - Competition laws	41
Article 20 - Currency conversion and remittance of earnings	43
Article 21 - Sale and marketing of air service products	44
Article 22 - Non-national personnel and access to local services	45
Article 23 - Change of gauge	47
Article 24 - Ground handling	50
Article 25 - Codesharing/Cooperative arrangements	52
Article 26 - Leasing	55
Article 27 - Intermodal services	59
Article 28 - Computer reservations systems (CRS)	60
Article 29 - Ban on smoking	61
Article 30 - Environmental protection	62
Article 31 - Statistics	63
Article 32 - Consultations	64
Article 33 - Settlement of disputes	65
Article 34 - Amendments	72
Article 35 - Registration with ICAO	75
Article 36 - Exceptions	76
Article 37 - Existing agreements	77
Article 38 - Review	78
Article 39 - Withdrawal.....	79
Article 40 - Depository.....	80
Article 41 - Signature and notification	81
Article 42 - Accession	82
Article 43 - Entry into force	83
Annex I - Non-scheduled/Charter operations	84
Annex II - Air cargo services.....	89
Annex III - Transitional Measures	91
Annex IV - Essential Service and Tourism Development Routes	93

Preamble	
[Option 1 of 2] The Government of and the Government of hereinafter referred to as the “Parties”; Being parties to the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944; Desiring to contribute to the progress of international civil aviation; Desiring to conclude an agreement for the purpose of establishing and operating air services between and beyond their respective territories; Have agreed as follows: [Option 2 of 2] The Government of and the Government of.... (hereinafter, “the Parties”); Being Parties to the Convention on International Civil Aviation, opened for signature at Chicago on 7 December, 1944; Desiring to promote an international aviation system based on competition among airlines in the marketplace with minimum government interference and regulation; Desiring to facilitate the expansion of international air services opportunities; Recognising that efficient and competitive international air services enhance trade, the welfare of consumers, and economic growth; Desiring to make it possible for airlines to offer the travelling and shipping public a variety of service options [at the lowest prices that are not discriminatory and do not represent abuse of a dominant position], and wishing to encourage individual airlines to develop and implement innovative and competitive prices; and	<i>The initial part of the agreement presents the reason for entering into the agreement and declares that they have agreed to what will follow in subsequent parts of the agreement.</i> <i>This approach is common in more liberal agreements and the bracketed text is common to “open skies” agreements.</i>

Preamble (cont'd)	
Desiring to ensure the highest degree of safety and security in international air services and reaffirming their grave concern about acts or threats against the security of aircraft, which jeopardise the safety of persons or property, adversely affect the operation of air services, and undermine public confidence in the safety of civil aviation. Have agreed as follows:	

Article 1 Definitions	
For the purposes of this Agreement, unless otherwise stated, the term: a) “air transportation” means the public carriage by aircraft of passengers, baggage, cargo and mail, separately or in combination, for remuneration or hire; b) “aeronautical authorities” means, in the case of _ the _; in the case of _ the _; or in both cases any other authority or person empowered to perform the functions now exercised by the said authorities; c) “Agreement” means this Agreement, its Annex, and any amendments thereto; d) “capacity” is the amount(s) of services provided under the agreement, usually measured in the number of flights (frequencies) or seats or tons of cargo offered in a market (city pair, or country-to-country) or on a route during a specific period, such as daily, weekly, seasonally or annually; e) “Convention” means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, 1944, and includes any Annex adopted under Article 90 of that Convention, and any amendment of the Annexes or Convention under Articles 90 and 94, insofar as such Annexes and amendments have become effective for both Parties; f) “designated airline” means an airline which has been designated and authorized in accordance with Article _ of this Agreement;	<i>While the Parties to an air services agreement may choose to define any number of terms used in their agreement, for the purposes of clarity or in the event of any possible ambiguity, the foregoing are the terms that may be commonly found in a Definitions article.</i> <i>For “aeronautical authorities” the required insertions will depend on the prevailing administrative structures and arrangements in place in each Party.</i>

Article 1 Definitions (cont'd)	
g) “domestic air transportation” is air transportation in which passengers, baggage, cargo and mail which are taken on board in a States territory are destined to another point in that same State’s territory; h) “ICAO” means the International Civil Aviation Organization; i) “intermodal air transportation” means the public carriage by aircraft and by one or more surface modes of transport of passengers, baggage, cargo and mail, separately or in combination, for remuneration or hire; j) “international air transportation” is air transportation in which the passengers, baggage, cargo and mail which are taken on board in the territory of one State are destined to another State; k) “Party” is a State which has formally agreed to be bound by this agreement; l) [“price”] or [“tariff”] means any fare, rate or charge for the carriage of passengers, baggage and/or cargo (excluding mail) in air transportation (including any other mode of transportation in connection therewith) charged by airlines, including their agents, and the conditions governing the availability of such fare, rate or charge; m) “territory” in relation to a State [means the land areas and territorial waters adjacent thereto and the airspace above them under the sovereignty of that State] has the meaning assigned to it in Article 2 of the Convention; n) “user charges” means a charge made to airlines by the competent authorities, or permitted by them to be made, for the provision of airport property or facilities or of air navigation facilities, or aviation security facilities or services, including related services and facilities, for aircraft, their crews, passengers and cargo; and o) “air service”, “international air service”, “airline”, and “stop for non-traffic purposes”, have the meanings assigned to them in Article 96 of the Convention.	<i>Although the broader and more modern term “price” is used rather than “tariff”; the definition is essentially the same for both terms.</i> <i>For the term “territory” there are two possible ways to define it, one by reference to the definition of that word in Article 2 of the Convention, and the other spelling out the usual meaning attributed to it in international law and practice. Both are presented as alternative language.</i>

Article 2 Grant of rights	
Traditional 1.* Each Party grants to the other Parties the following rights for the conduct of international air transportation by the airlines of the other Parties: a)* the right to fly across its territory without landing; b)* the right to make stops in its territory for non-traffic purposes; c) the right to provide international air transportation to and from any other Party, provided such services originate or terminate in the territory of the Party designating the airline. [International air transportation to or coming from the territories of non-Party State shall require the authorization of the Parties involved.] [Paragraph 2, option 1 of 2] 2. Nothing in this Agreement shall be deemed to confer on the airline or airlines of one Party the right to take on board, in the territory of another Party, passengers, baggage, cargo, or mail carried for remuneration and destined for another point in the territory of that other Party. [Paragraph 2, option 2 of 2] 2. A Party shall not be required to grant cabotage rights to an airline of another Party.	<i>A key issue for States negotiating a regional or plurilateral agreement is what provisions, if any, should be made in the regional or plurilateral agreement with respect to rights for air services between Parties to the agreement and non-Party States.</i> <i>The foregoing first two freedoms of the air, although included in multilateral agreements (for scheduled services, the International Air Services Transit Agreement (IASTA); for non-scheduled services, Article 5 of the Convention), are also commonly included in regional or plurilateral agreements, either because some States may not be, or may cease to be, parties to the IASTA.</i> <i>In a traditional approach, an agreement does not deal with air services between a Party and a non-Party, leaving those rights to be determined by the relevant agreements between a Party and non-Parties. In this sense such agreements could be described as self-contained. An alternative for this type of self-contained agreement is for the Parties to define and exchange the first five freedoms of the air.</i> <i>In a manner similar to the practice in bilateral agreements, an approach may be for Parties to explicitly exclude cabotage rights (option 1), or to make it clear in the agreement that Parties to the Agreement are not required to grant such rights, leaving this decision to the Parties to the Agreement (option 2).</i>

Article 2 Grant of rights (cont'd)	
Transitional 1.* Each Party grants to the other Parties the following rights for the conduct of international air transportation by the airlines of the other Parties: a)* the right to fly across its territory without landing; b)* the right to make stops in its territory for non-traffic purposes; and c) the right to provide international air transportation to and from any other Party, and between non-Party States and those other Parties with which the designating State has negotiated Fifth freedom rights, provided such services originate or terminate in the territory of the Party designating the airline; and d) the right to provide [scheduled and] non-scheduled air cargo services between any other Party and a non-Party State. [Paragraph 2, option 1 of 2] 2. Until [insert a date agreed to by the Parties], a Party shall authorize cabotage traffic rights for the designated airline(s) of every other Party, provided that the traffic rights are exercised on a service which constitutes and is scheduled as an extension of a service from, or as preliminary to, the Party designating the airline. [Paragraph 2, option 2 of 2] 2. A Party shall authorize cabotage rights for the designated airline(s) of every other Party provided the cabotage segment is operated between two international segments of the flight. Full liberalization 1.* Each Party grants to the other Parties the following rights for the conduct of international air transportation by the airlines of the other Parties:	<i>The foregoing first two freedoms of the air, although included in multilateral agreements (for scheduled services, the International Air Services Transit Agreement (IASTA); for non-scheduled services, Article 5 of the Convention), are also commonly included in regional or plurilateral agreements, either because some States may not be, or may cease to be, parties to the IASTA.</i> <i>This transitional approach envisions the negotiation between Parties to the Agreement of beyond rights to non-Parties (Fifth freedom rights) on the basis of specific criteria. Exercise of these rights would, of course, be dependent on obtaining the corresponding rights from the non-Party State.</i> <i>This approach includes Seventh freedom for scheduled (as an option) and non-scheduled all cargo services.</i> <i>The transitional approach to cabotage would usually precede a conversion to unrestricted cabotage after the agreed date.</i> <i>The direct link of domestic and international flight segments caused this type of operation to be described as consecutive cabotage (Eighth freedom).</i> <i>This option limits cabotage to situations where an air carrier provides international transportation to two points in another State on a co-terminal basis (where the same flight serves two points in another State.)</i>

Article 2 Grant of rights (cont'd)	
Full liberalization (cont'd) a)* the right to fly across its territory without landing; b)* the right to make stops in its territory for non-traffic purposes; and c) the right, in accordance with the terms of their designations, to perform scheduled and charter international air transportation between points on the following routes: i) from points behind the territory of the Party designating the airline via the territory of that Party and intermediate points to any point or points in the territory of the Party granting the right and beyond; ii) for passenger and all-cargo service or services, between the territory of the Party granting the right and any point or points; and d) the rights otherwise specified in the Agreement. 2. Each designated airline may on any or all flights and at its option: a) operate flights in either or both directions; b) combine different flight numbers within one aircraft operation; c) serve behind, intermediate and beyond points and points in the territories of the Parties on the routes in any combination and in any order; d) omit stops at any point or points; e) transfer traffic from any of its aircraft to any of its other aircraft at any point on the routes;	<i>The foregoing first two freedoms of the air, although included in multilateral agreements (for scheduled services, the International Air Services Transit Agreement (IASTA); for non-scheduled services, Article 5 of the Convention), are also commonly included in regional or plurilateral agreements, either because some States may not be, or may cease to be, parties to the IASTA.</i> <i>The full liberalization formula accords each Party not only full traffic rights to/from every other Party to the agreement but Fifth freedom rights to/from the territory of every other Party and non-Party States as well as Seventh freedom for all-cargo services. However, as with the transitional formulation, the exercise of Fifth freedom rights between another Party and a non-Party will depend on the rights available between the non-Party and the Party exercising the Fifth freedom rights in the regional or plurilateral agreement. (For example, the more "open skies" bilateral agreements which a Party has with non-Party States, the more potential Fifth freedom routes it will have to/from other Parties to the agreement.) Some agreements may also grant rights with respect to a specific type of service, for example including a provision dealing with non scheduled cargo flights to non-Party States.</i> <i>Most of these provisions on operational flexibility are similar to that of liberal bilateral provisions that are usually covered in a Route schedule.</i>

Article 2 Grant of rights (cont'd)	
Full liberalization (cont'd) f) serve points behind any point in its territory with or without change of aircraft or flight number and hold out and advertise such services to the public as through services; g) make stopovers at any points whether within or outside the territory of any Party; h) carry transit traffic through any other Party's territory; and i) combine traffic on the same aircraft regardless of where such traffic originates; without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under the present Agreement. 3. On any international segment or segments of the agreed routes, a designated airline may perform international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated; provided that [with the exception of all-cargo services] the transportation beyond such point is a continuation of the transportation from the territory of the Party that has designated the airline and, in the inbound direction, the transportation to the territory of the Party that has designated the airline is a continuation of the transportation from beyond such point. 4. A Party shall authorize cabotage rights for the designated airline(s) of every other Party without restriction.	<i>This provision may not be needed if the agreement includes an article on Change of gauge.</i> <i>The provision provides extensive operational flexibility in the use of equipment. This type of provision would , for example, enable a hub type operation to be established at the change point, subject of course to agreement being reached with other relevant partners. The only restriction is that services be conducted in a linear fashion, that is that the flight on the second sector be the extension or continuation of the prior connecting outbound or inbound flight. The bracketed language removes this restriction for all-cargo services.</i> <i>Full liberalization does not require any link between the cabotage segment and any international segment; it would permit a designated airline of one Party to establish a hub and spoke operation (with domestic segments as the spokes) in the territory of any other Party (stand alone cabotage or Ninth freedom).</i>

Article 3 Designation and authorization	
Traditional 1. Each Party shall have the right to designate in writing an airline [or an eligible airline from another Party State] to operate the agreed services in accordance with this Agreement and to withdraw or alter such designation. Such designation shall be transmitted to the other Parties in writing through diplomatic channels [and to the Depository]. 2.* On receipt of such a designation, and of application from the designated airline, in the form and manner prescribed for operating authorization [and technical permission], each Party shall grant the appropriate operating authorization with minimum procedural delay, provided that: a) the airline is substantially owned and effectively controlled by one or more of the Parties to this Agreement, their nationals or both;	<i>The formulation of the Designation and authorization provision may be simplified by addressing the reasons in paragraph 2 for a State to receive an authorization in the Revocation of authorization Article, since the conditions for not granting an authorization are the same.</i> <i>The traditional approach refers to one airline or a single designation. An option may also be for a State Party to designate an eligible airline from another State Party to operate air services on its behalf. In this case the Parties, prior to granting the authorization, should agree on certain eligibility criteria such as the right of establishment, licensing, and safety and security standards.</i> <i>The traditional ownership and control criteria in regional or plurilateral agreements and arrangements is common ownership and control of the air carrier concerned by Parties to the agreement and/or their nationals. As an attempt to broaden the ownership and control requirement and to encourage multinational airlines this has faced the problem of the acceptance of this criteria by non-Party States. In the absence of widespread acceptance by non-Party States of common ownership and control criteria, regionally owned airlines may find their markets confined to the territories of other Parties to the regional or plurilateral agreement or arrangement.</i>

Article 3 Designation and authorization (cont'd)	
Traditional b)* the Party designating the airline is in compliance with the provisions set forth in Article _ (Safety) and Article _ (Aviation Security); and c)* the designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party considering the application or applications. 3.* On receipt of the operating authorization of paragraph 2, a designated airline may at any time begin to operate the agreed services for which it is so designated, provided that the airline complies with the applicable provisions of this Agreement. [4.* Parties granting operating authorizations in accordance with paragraph 2 of this Article shall notify such action to the Depository.] Transitional 1. Each Party shall have the right to designate one or more airlines to operate the agreed services in accordance with this Agreement and to withdraw or alter such designation. Such designation shall be transmitted to the other Parties in writing through diplomatic channels [and to the Depository]. 2.* On receipt of such a designation, and of application from the designated airline, in the form and manner prescribed for operating authorization [and technical permission], each Party shall grant the appropriate operating authorization with minimum procedural delay, provided that:	<i>For a Party which receives the designation, it would retain the discretionary right of refusal as a measure of control to address legitimate concerns if and when required. This provision addresses potential concerns such as safety, security or other economic aspects including potential emergence of “flags of convenience”.</i> <i>As an option, upon granting of an authorization, Parties agree to notify the Depository of the agreement who is responsible of maintaining a centralized register of airline designation and operating authorizations.</i> <i>The transitional approach refers to one or more airlines or multiple designation. The phrasing was sometimes interpreted as being met by the designation of two airlines. The transitional approach also includes formulae for increasing the number of designated airlines on specific routes based on, for example, negotiated multi-year increases or the achievement of a specified level of passenger traffic in city-pair markets.</i>

Article 3 Designation and authorization (cont'd)	
Transitional a) the designated airline has its principal place of business (see (i) below) [and permanent residence] in the territory of the designating Party; b) the Party designating the airline has and maintains effective regulatory control (see (ii) below) of the airline; <i>Notes.—</i> (i) evidence of principal place of business includes such factors as: the airline is established and incorporated in the territory of the designating Party in accordance with relevant national laws and regulations, has a substantial amount of its operations and capital investment in physical facilities in the territory of the designating Party, pays income tax, registers and bases its aircraft there, and employs a significant number of nationals in managerial, technical and operational positions. (ii) evidence of effective regulatory control includes but is not limited to: the airline holds a valid operating licence or permit issued by the licensing authority such as an Air Operator Certificate (AOC), meets the criteria of the designating Party for the operation of international air services, such as proof of financial health, ability to meet public interest requirement, obligations for assurance of service; and the designating Party has and maintains safety and security oversight programmes in compliance with ICAO standards.	<i>This transitional approach recommended by ICAO removes the ownership requirement but retains effective control (including safety and security oversight) while adding incorporation in and principal place of business in the designating Party. It would permit investment by entities from non-Parties in airlines of the Parties. Such control is envisioned primarily through licensing which can include both economic and operational elements. The arrangement would not require the State to change its existing laws, policies or regulations pertaining to national ownership and control of its own national air carrier(s), but would allow such change if and when the State wishes to do so.</i>

Article 3 Designation and authorization (cont'd)	
Transitional (cont'd) c)* the Party designating the airline is in compliance with the provisions set forth in Article _ (Safety) and Article _ (Aviation Security); and d)* the designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party considering the application or applications. 3.* On receipt of the operating authorization of paragraph 2, a designated airline may at any time begin to operate the agreed services for which it is so designated, provided that the airline complies with the applicable provisions of this Agreement. [4.* Parties granting operating authorizations in accordance with paragraph 2 of this Article shall notify such action to the Depository.] Full liberalization 1. Each Party shall have the right to designate as many airlines as it wishes to operate the agreed services in accordance with this Agreement and to withdraw or alter such designation. Such designation shall be transmitted to the other Parties in writing through diplomatic channels [and to the Depository]. 2.* On receipt of such a designation, and of application from the designated airline, in the form and manner prescribed for operating authorization [and technical permission], each Party shall grant the appropriate operating authorization with minimum procedural delay, provided that:	<i>For a Party which receives the designation, it would retain the discretionary right of refusal as a measure of control to address legitimate concerns if and when required. This provision addresses potential concerns such as safety, security or other economic aspects including potential emergence of “flags of convenience”.</i> <i>As an option, upon granting of an authorization, Parties agree to notify the Depository of the agreement who is responsible of maintaining a centralized register of airline designation and operating authorizations.</i> <i>The full liberalization approach refers to as many airlines or no quantitative limit on the number of airlines which can be designated.</i>

Article 3 Designation and authorization (cont'd)	
Full liberalization (cont'd) a) the airline is under the effective regulatory control of the designating Party; b)* the Party designating the airline is in compliance with the provisions set forth in Article _ (Safety) and Article _ (Aviation Security); and c)* the designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party considering the application or applications. 3.* On receipt of the operating authorization of paragraph 2, a designated airline may at any time begin to operate the agreed services for which it is so designated, provided that the airline complies with the applicable provisions of this Agreement. [4.* Parties granting operating authorizations in accordance with paragraph 2 of this Article shall notify such action to the Depository.]	<i>Full liberalization removes all criteria pertaining to the airline, but requires effective regulatory control by the designating State to ensure compliance with Safety and Security standards. It would also include a “right of establishment” that is a right for non-nationals to establish and operate an airline in the territory of a Party which could then engage in domestic and international air services.</i> <i>For a Party which receives the designation, it would retain the discretionary right of refusal as a measure of control to address legitimate concerns if and when required. This provision addresses potential concerns such as safety, security or other economic aspects including potential emergence of “flags of convenience”.</i> <i>As an option, upon granting of an authorization, Parties agree to notify the Depository of the agreement who is responsible of maintaining a centralized register of airline designation and operating authorizations.</i>

Article 4 Withholding, revocation and limitation of authorization	
Traditional 1.* The aeronautical authorities of each Party shall have the right to withhold the authorizations referred to in Article _ (Designation and authorization) of this Agreement with respect to an airline designated by any other Party, and to revoke, suspend or impose conditions on such authorizations, temporarily or permanently: a) in the event that they are not satisfied that substantial ownership and effective control are vested in one or more of the Parties designating the airline, their nationals, or both; b)* in the event of failure of the Party designating the airline to comply with the provisions set forth in Article _ (Safety) and Article _ (Aviation security); and c)* in the event of failure that such designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party receiving the designation.	<i>The reasons for any Party that receives a request for an authorization to not authorize initially or to subsequently revoke, suspend or condition an authorization it has granted are the same. Consequently, if the criteria for designation requires such formulation as common ownership and control of the air carrier concerned by Parties to the agreement and/or their nationals or “principal place of business”, then the failure to meet that requirement will be grounds for revocation, suspension or the imposition of conditions on the operating permission.</i> <i>Other bases for revocation are broader in scope and are covered by cross reference to the requirements to comply with the provisions on safety, security and the laws and regulations of that Party.</i>

Article 4 Withholding, revocation and limitation of authorization (cont'd)		
	Transitional	
	1.* The aeronautical authorities of each Party shall have the right to withhold the authorizations referred to in Article _ (Designation and authorization) of this Agreement with respect to an airline designated by any other Party, and to revoke, suspend or impose conditions on such authorizations, temporarily or permanently: a) in the event that they are not satisfied that the designated airline has its principal place of business (see (i) below) [and permanent residence] in the territory of the designating Party; b) in the event that they are not satisfied that the Party designating the airline has and maintains effective regulatory control (see (ii) below) of the airline; <i>Notes.—</i> (i) evidence of principal place of business includes such factors as: the airline is established and incorporated in the territory of the designating Party in accordance with relevant national laws and regulations, has a substantial amount of its operations and capital investment in physical facilities in the territory of the designating Party, pays income tax, registers and bases its aircraft there, and employs a significant number of nationals in managerial, technical and operational positions. (ii) evidence of effective regulatory control includes but is not limited to: the airline holds a valid operating licence or permit issued by the licensing authority such as an Air Operator Certificate (AOC), meets the criteria of the designating Party for the operation of international air services, such as proof of financial health, ability to meet public interest requirement, obligations for assurance of service; and the designating Party has and maintains safety and security oversight programmes in compliance with ICAO standards. c)* in the event of failure of the Party designating the airline to comply with the provisions set forth in Article _ (Safety) and Article _ (Aviation security); and	<i>This transitional criteria removes the ownership requirement but retains effective control while adding incorporation in and principal place of business in the designating Party. It would permit investment by entities from non-Parties in airlines of the Parties.</i>

Article 4 Withholding, revocation and limitation of authorization (cont'd)				
Transitional (cont'd) d)* in the event of failure that such designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party receiving the designation. Full liberalization 1.* The aeronautical authorities of each Party shall have the right to withhold the authorizations referred to in Article _ (Designation and authorization) of this Agreement with respect to an airline designated by any other Party, and to revoke, suspend or impose conditions on such authorizations, temporarily or permanently: a) in the event that they are not satisfied that the airline is under the effective regulatory control of the designating State; b)* in the event of failure of the Party designating the airline to comply with the provisions set forth in Article _ (Safety) and Article _ (Aviation security); and c)* in the event of failure that such designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party receiving the designation. Traditional/Transitional/ Full liberalization 2.* Unless immediate action is essential to prevent infringement of the laws and regulations referred to above or unless safety or security requires action in accordance with the provisions of Article _ (Safety) or Article _ (Aviation security), the rights enumerated in paragraph 1 of this Article shall be exercised only after consultations between the aeronautical authorities in conformity with Article _ (Consultation) of this Agreement.				
		<i>Compliance with the laws and regulations as well as safety and security provisions is constrained in paragraph 2 by the need in the first instance for consultation.</i>		

Article 5 Application of laws	
[Paragraph 1, option 1 of 2] 1. The laws and regulations of any Party governing entry into and departure from its territory of aircraft engaged in international air services, or the operation and navigation of such aircraft while within its territory, shall be applied to aircraft of the designated airline of each Party. [Paragraph 1, option 2 of 2] 1. While entering, within, or leaving the territory of one Party, its laws and regulations relating to the operation and navigation of aircraft shall be complied with by any other Party. [Paragraph 2, option 1 of 2] 2. The laws and regulations of any Party relating to the entry into, stay in and departure from its territory of passengers, crew and cargo including mail such as those regarding immigration, customs, currency and health and quarantine shall apply to passengers, crew, cargo and mail carried by the aircraft of the designated airline of each Party while they are within the said territory. [Paragraph 2, option 2 of 2] 2. While entering, within, or leaving the territory of one Party, its laws and regulations relating to the admission to or departure from its territory of passengers, crew or cargo on aircraft (including regulations relating to entry, clearance, aviation security, immigration, passports, customs and quarantine, or in the case of mail, postal regulations) shall be complied with by, or on behalf of, such passengers, crew or cargo of any Party.	<i>This Article is found in most air services agreements and reproduces the substance of Article 11 of the Convention. There is a general commitment by the Parties to use ICAO Standards and Recommended Practices (SARPs) concerning facilitation. The Article on “Inadmissible and undocumented passengers and deportees” contains a more specific commitment concerning Annex 9 procedures.</i> <i>Under the first alternative, paragraph 1 recognizes that a Party’s laws with respect to the operation of aircraft and admission of passengers, crew, cargo and mail will be applied to the other Party’s airlines.</i> <i>Under the second alternative, paragraph 1 shifts the emphasis to compliance by airlines with a Party’s laws on operation and navigation of aircraft and the admission, transit and departure of passengers, crew, cargo and mail.</i> <i>Paragraph 2 focuses on the application of, which is to say, compliance with those laws and regulations related to customs, immigration, currency, health and quarantine of the other Party.</i> <i>Paragraph 2 focuses on the application of, which is to say, compliance with those laws and regulations related to customs, immigration, currency, health and quarantine of the other Party.</i>

Article 5 Application of laws	
[Paragraph 2, option 2 of 2] (cont'd) 3.* No Party shall give preference to its own or any other airline over a designated airline of the other Parties engaged in similar international air transportation in the application of its immigration, customs, quarantine and similar regulations.	<i>Paragraph 3 is common to both alternatives and addresses non-discrimination.</i>

Article 6 Direct transit	
[Option 1 of 2] Passengers, baggage, cargo and mail in direct transit shall be subject to no more than a simplified control. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes. [Option 2 of 2] Passengers, baggage and cargo in direct transit through the territory of any Party and not leaving the area of the airport reserved for such purpose shall not undergo any examination except for reasons of aviation security, narcotics control, prevention of illegal entry or in special circumstances.	<i>In some agreements, this provision could be stated separately or included in the Application of laws Article.</i> <i>Option 1 is a standard facilitation measure for simplified transit found in most air services agreements.</i> <i>Option 2, found in liberalized agreements, addresses the security situation of transit traffic rather than the controls or customs and tax treatment.</i>

Article 7 Recognition of certificates	
1. Certificates of airworthiness, certificates of competency and licenses issued or rendered valid by any Party and still in force shall be recognized as valid by each Party for the purpose of operating the agreed services provided that the requirements under which such certificates and licenses were issued or rendered valid are equal to or above the minimum standards which may be established pursuant to the Convention. 2. If the privileges or conditions of the licences or certificates referred to in paragraph 1 above, issued by the aeronautical authorities of one Party to any person or designated airline or in respect of an aircraft used in the operation of the agreed services, should permit a difference from the minimum standards established under the Convention, and which difference has been filed with the International Civil Aviation Organization, each Party may request consultations between the aeronautical authorities with a view to clarifying the practice in question. 3. Each Party reserves the right, however, to refuse to recognize for the purpose of flights above or landing within its own territory, certificates of competency and licenses granted to its own nationals by another Party.	<i>This provision on Recognition of Certificates is found in most air service agreements even though, in essence, it simply reproduces in paragraphs 1 and 2 two provisions of the Convention, Articles 33 and 32 b) respectively, with some minor variations in wording. This provision could be a separate article or could also be part of a “Safety” Article.</i> <i>In paragraph 1, the Parties exchange mutual recognition of currently valid certificates of airworthiness and competency and licenses issued by the other Party.</i> <i>States may find it useful to have a procedure to deal with differences filed with respect to the standards established pursuant to the Convention.</i> <i>This provision reserves the right to refuse to recognize any certificates or licenses issued by any Party to the first Party’s nationals. Drawn from Article 32 b) of the Convention, the provision is necessary because Article 32 a) requires pilots to be provided with licenses issued by the State of registry of the aircraft. Consequently, it is not possible for the recognition to extend to a license issued to that State’s own nationals by another State.</i>

Article 8 Safety	
1. Any Party may request consultations at any time concerning the safety standards maintained by another Party in areas relating to aeronautical facilities, flight crew, aircraft and the operation of aircraft. Such consultations shall take place within thirty days of that request. 2. If, following such consultations, any Party finds that the other Party does not effectively maintain and administer safety standards in the areas referred to in paragraph 1 that meet the Standards established at that time pursuant to the <i>Convention on International Civil Aviation</i> (Doc 7300), that other Party shall be informed of such findings and of the steps considered necessary to conform with the ICAO Standards. That other Party shall then take appropriate corrective action within an agreed time period. 3. Pursuant to Article 16 of the Convention, it is further agreed that, any aircraft operated by, or on behalf of an airline of any Party, on service to or from the territory of another Party, may, while within the territory of the other Party be the subject of a search by the authorized representatives of the other Party, provided this does not cause unreasonable delay in the operation of the aircraft. Notwithstanding the obligations mentioned in Article 33 of the Chicago Convention, the purpose of this search is to verify the validity of the relevant aircraft documentation, the licensing of its crew, and that the aircraft equipment and the condition of the aircraft conform to the Standards established at that time pursuant to the Convention.	<i>The foregoing model clause on safety developed by ICAO provides a standardized process for Parties to an agreement to address safety concerns. It is intended to ensure that aircraft operated by, or on behalf of, designated airlines in the other Party's territory are operated and maintained in accordance with ICAO Standards and Recommended Practices. The provision takes a wide view of an aircraft operation by including aeronautical facilities, which implies the provision of facilities such as air traffic control, airport and navigational aids, in addition to the aircraft and its crew.</i> <i>However, nothing prevents the Parties from inserting additional or more restrictive criteria that they feel may be necessary for assessing the safety of an aircraft operation, such as the alternative wording for ramp inspection which specifies the findings and determinations that can be made by aeronautical authorities following a ramp inspection, and additionally addresses the situation where there is a denial of access for a ramp inspection.</i>

Article 8 Safety (cont'd)	
4. When urgent action is essential to ensure the safety of an airline operation, each Party reserves the right to immediately suspend or vary the operating authorization of an airline or airlines of another Party. 5. Any action by any Party in accordance with paragraph 4 above shall be discontinued once the basis for the taking of that action ceases to exist. 6. With reference to paragraph 2, if it is determined that any Party remains in non-compliance with ICAO Standards when the agreed time period has lapsed, the Secretary General of ICAO should be advised thereof. The latter should also be advised of the subsequent satisfactory resolution of the situation.	<i>Except for this provision, there is no specific reference to sanctions in the Safety Article in view of the possibility of taking action under the Revocation provision to revoke, suspend or impose conditions on a designated airlines authorization for failing to comply with, inter alia, the Safety Article.</i>

Article 9 Aviation security	
1. Consistent with their rights and obligations under international law, the Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Parties shall, in particular, act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970 and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971, its Supplementary Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on 24 February 1988 as well as with any other convention and protocol relating to the security of civil aviation which the Parties adhere to. 2. Each Party shall provide, upon request of another Party, all necessary assistance to the other Party to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.	<i>The provision on aviation security was developed by ICAO. It incorporates by general reference, in paragraphs 1 and 3 respectively, obligations on aviation security arising from the various international instruments on unlawful interference to which the Parties may be signatories, and to Annex 17 on Aviation Security in the Convention, which applies to all Contracting States of ICAO. Any changes to the Standards and Recommended Practices of the latter which may come into effect subsequent to the adoption of the agreement would also apply to the Parties. The clause emphasizes mutual assistance in the prevention of unlawful seizure or other such acts, requests for special security measures and whenever there is an unlawful act or the threat of one. The clause does not limit the contractual freedom of Parties to expand or limit its scope or to use a different approach.</i>
3. Each Party shall, in its mutual relations, act in conformity with the aviation security provisions established by ICAO and designated as Annexes to the Convention; it shall require that operators of aircraft of its registry or operators of aircraft who have their principal place of business or permanent residence in its territory and the operators of airports in its territory act in conformity with such aviation security provisions. [Each Party shall advise every other Party of any difference between its national regulations and practices and the aviation security standards of the Annexes. Any Party may request immediate consultations with each Party at any time to discuss any such differences.]	<i>The bracketed language in paragraph 3 provides a procedure for handling differences which could be filed for security standards.</i>

Article 9 Aviation security (cont'd)	
4. Each Party agrees that such operators of aircraft may be required to observe the aviation security provisions referred to in paragraph 3) above required by every other Party for entry into, departure from, or while within, the territory of that other Party. Each Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Party shall also give sympathetic consideration to any request from every Party for reasonable special security measures to meet a particular threat. 5. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof. [6. Each Party shall have the right, within sixty (60) days following notice (or such shorter period as may be agreed between the aeronautical authorities), for its aeronautical authorities to conduct an assessment in the territory of another Party of the security measures being carried out, or planned to be carried out, by aircraft operators in respect of flights arriving from, or departing to the territory of the first Party. The administrative arrangements for the conduct of such assessments shall be agreed between the aeronautical authorities and implemented without delay so as to ensure that assessments will be conducted expeditiously.]	<i>The alternative paragraphs 6 and 7 address, respectively, the inspection of security facilities and procedures in another Party's territory and the need for prompt consultations on security matters (which have greater urgency than consultation on other issues) as well as the ability to take interim action when warranted.</i>

Article 9 Aviation security (cont'd)	
[7. When a Party has reasonable grounds to believe that another Party has departed from the provisions of this Article, the aeronautical authorities of that Party may request consultations. Such consultations shall start within fifteen (15) days of receipt of such a request from any Party. Failure to reach a satisfactory agreement within fifteen (15) days from the start of consultations shall constitute grounds for withholding, revoking, suspending or imposing conditions on the authorizations of the airline or airlines designated by another Party. When justified by an emergency, or to prevent further non-compliance with the provisions of this Article, a Party may take interim action at any time.]	

Article 10 Security of travel documents	
1. Each Party agrees to adopt measures to ensure the security of their passports and other travel documents. 2. In this regard, each Party agrees to establish controls on the lawful creation, issuance, verification and use of passports and other travel documents and identity documents issued by, or on behalf of, that Party. 3. Each Party also agrees to establish or improve procedures to ensure that travel and identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be unlawfully altered, replicated or issued. 4. Pursuant to the objectives above, each Party shall issue their passports and other travel documents in accordance with ICAO Doc 9303, <i>Machine Readable Travel Documents: Part 1 – Machine Readable Passports, Part 2 – Machine Readable Visas, and/or Part 3 – Size 1 and Size 2 Machine Readable Official Travel Documents</i>. 5. Each Party further agrees to exchange operational information regarding forged or counterfeit travel documents, and to cooperate with the other to strengthen resistance to travel document fraud, including the forgery or counterfeiting of travel documents, the use of forged or counterfeit travel documents, the use of valid travel documents by imposters, the misuse of authentic travel documents by rightful holders in furtherance of the commission of an offence, the use of expired or revoked travel documents, and the use of fraudulently obtained travel documents.	<i>ICAO's Machine Readable Travel Document's technical specifications, contained in ICAO Doc 9303, permit reliable verification of the authenticity of travel documents and their holders and provide strong safeguards against alteration, forgery or counterfeit. Nearly 100 Contracting States issue Machine Readable Passports and other Machine Readable Travel Documents, in accordance with the specifications in Doc 9303. ICAO's Resolutions recognize that Doc 9303's specifications not only are effective in accelerating the movement of international passengers and crew members through border control, they also enhance security and immigration compliance programmes. Resolutions of the United Nations (UN) Security Council and other bodies of the UN, call upon States to enhance international cooperation to combat the smuggling of aliens and to prevent the use of fraudulent documents.</i> <i>Inclusion of this Article in air services agreements would enhance international efforts, by States, against the use of fraudulent and counterfeit travel documents for illegal migration, the smuggling of migrants and the movement of terrorists or terrorist groups across borders.</i>

Article 11 Inadmissible and undocumented passengers and deportees	
1. Each Party agrees to establish effective border controls. 2. In this regard, each Party agrees to implement the Standards and Recommended Practices of Annex 9 (Facilitation) to the Chicago Convention concerning inadmissible and undocumented passengers and deportees in order to enhance cooperation to combat illegal migration. 3. Pursuant to the objectives above, each Party agrees to issue, or to accept, as the case may be, the letter relating to “fraudulent, falsified or counterfeit travel documents or genuine documents presented by imposters” set out in Appendix 9 b) to Annex 9 (11th Edition), when taking action under relevant paragraphs of Chapter 3 of the Annex regarding the seizure of fraudulent, falsified or counterfeit travel documents.	<i>Chapter 3 of Annex 9 (Facilitation) to the Chicago Convention includes Standards and Recommended Practices setting out general procedures to be followed by States and airlines when dealing with inadmissible passengers, undocumented passengers and deportees. Appendix 9 is intended to replace, as a travel document, fraudulent, falsified or counterfeit travel documents seized from passengers who have used them for travel. The idea behind existing paragraphs and Appendix 9 is to remove, from circulation, fraudulent, falsified and counterfeit documents.</i> <i>Inclusion of this Article in air services agreements would enhance international efforts, by States, against the smuggling of migrants and the movement of terrorists or terrorist groups across borders.</i>

Article 12 User charges	
[Paragraphs 1 and 2, option 1 of 2] 1. No Party shall impose or permit to be imposed on the designated airlines of another Party user charges higher than those imposed on its own airlines operating similar international services. 2. Each Party shall encourage consultations on user charges between its competent charging authority [or airport or air navigation service provider] and airlines using the service and facilities provided by those charging authorities [or service provider], where practicable through those airlines' representative organizations. Reasonable notice of any proposals for changes in user charges should be given to such users to enable them to express their views before changes are made. Each Party shall further encourage its competent charging authority [or service provider] and such users to exchange appropriate information concerning user charges. [Paragraphs 1 and 2, option 2 of 2] 1. User charges that may be imposed by the competent charging authorities or bodies of each Party on the airlines of another Party shall be just, reasonable, not unjustly discriminatory, and equitably apportioned among categories of users. In any event, any such user charges shall be assessed on the airlines of another Party on terms not less favourable than the most favourable terms available to any other airline at the time the charges are assessed.	<i>These two alternative approaches to a provision on user charges differ significantly. Some provisions refer to “designated airlines”. Parties would need to consider whether the provisions on the activities contained in this Party should also be extended to all airlines of a Party rather than only designated ones.</i> <i>This alternative is less detailed and merely reproduces in the first paragraph the non-discrimination principle governing user charges in Article 15 of the Convention viz. that charges on a foreign aircraft shall be no higher than those that would be imposed on its own aircraft in similar international operations.</i> <i>The provision encourages consultation between the charging authority and the users, that reasonable notice is given for any changes in charges and that appropriate information is exchanged concerning charges. These principles reflect ICAO policy on charges (Doc 9082). Because some States have commercialized or privatized their airport and air navigation service providers, and have delegated authority to set user charges, suitable wording in brackets is added to address such situations.</i> <i>In the second alternative, this provision includes certain principles which again reflect ICAO-developed policy. However, rather than use the formula from Article 15 of the Convention, as is done in the first alternative, this version applies a type of “most favoured nation” provision which is broader in application than Article 15.</i>

Article 12 User charges (cont'd)	
[Paragraphs 1 and 2, option 2 of 2 (cont'd)] 2. User charges imposed on the airlines of another Party may reflect, but shall not exceed, the full cost to the competent charging authorities or bodies of providing the appropriate airport, airport environmental, air navigation, and aviation security facilities and services at the airport or within the airport system. Such full costs may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis. 3. Each Party shall encourage consultations between the competent charging authorities or bodies in its territory and the airlines using the services and facilities, and shall encourage the competent authorities or bodies and the airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles in paragraphs 1 and 2. Each Party shall encourage the competent charging authorities to provide users with reasonable notice of any proposal for changes in user charges to enable users to express their views before changes are made. 4. No Party shall be held, in dispute resolution procedures pursuant to Article _ (Settlement of Disputes), to be in breach of a provision of this Article, unless: a) it fails to undertake a review of the charge or practice that is the subject of complaint by another Party within a reasonable amount of time; or b) following such a review it fails to take all steps within its power to remedy any charge or practice that is inconsistent with this Article.	<i>Certain ICAO cost recovery principles are set out in this provision.</i> <i>There are similar requirements regarding consultations, exchange of information and reasonable notice as can be found in the first alternative.</i> <i>The second approach introduces a review process prior to any treatment of user charges within the dispute settlement framework, and indicates that there is no breach of the Article, for purposes of the dispute settlement mechanism, if that review process is undertaken.</i>

Article 12 User charges (cont'd)	
[Paragraphs 1 and 2, option 2 of 2 (cont'd)] [5. Airports, airways, air traffic control and air navigation services, aviation security, and other related facilities and services that are provided in the territory of one Party shall be available for use by the airlines of another Party on terms no less favourable than the most favourable terms available to any airline engaged in similar international air services at the time arrangements for use are made.]	[Paragraphs 1 and 2, option 2 of 2 (cont'd)] <i>The bracketed language is essentially a more detailed version of Article 15 of the Convention.</i>

Article 13 Customs duties	
1. Each Party shall on the basis of reciprocity exempt a designated airline of another Party to the fullest extent possible under its national law from [import restrictions,] customs duties, excise taxes, inspection fees and other national duties and charges [not based on the cost of services provided on arrival] on aircraft, fuel, lubricating oils, consumable technical supplies, spare parts including engines, regular aircraft equipment, aircraft stores and other items [such as printed ticket stock, air waybills, any printed material which bears the insignia of the company printed thereon and usual publicity material distributed free of charge by that designated airline] intended for use or used solely in connection with the operation or servicing of aircraft of the designated airline of such other Party operating the agreed services. 2. The exemptions granted by this Article shall apply to the items referred to in paragraph 1: a) introduced into the territory of the Party by or on behalf of the designated airline of another Party; b) retained on board aircraft of the designated airline of one Party upon arrival in or leaving the territory of another Party; or c) taken on board aircraft of the designated airline of one Party in the territory of another Party and intended for use in operating the agreed services; whether or not such items are used or consumed wholly within the territory of the Party granting the exemption, provided the ownership of such items is not transferred in the territory of the said Party.	<i>A provision on customs and other duties is to be found in nearly all air services agreements and supplements the exemption on fuel, lubricating oils, spare parts, regular equipment and aircraft stores retained on board on arrival in another State's territory, found in Article 24 of the Convention. It also reflects ICAO policies on the taxation of international air transport (Doc 8632). The purpose of the provision is to exempt international aviation operations from various customs duties and other taxes on fuel, spare parts, supplies and equipment, that would normally be applied to a foreign aircraft when operating in another jurisdiction. The nature of international air transport and the potentially adverse economic impact of such imposts have been the rationale for the almost global acceptance of this provision.</i> <i>It should be noted that there are different interpretations of what constitutes an international leg of a service, for example, as it applies to tariffs and customs duties exemptions. States may therefore seek to include a clarification to this effect in any air services agreement entered into, particularly where cabotage rights are exchanged. In such cases, exemptions provided by this Article would be modified to take into account the nature of the service and its compatibility with domestic laws.</i> <i>In some situations the exemption is not a blanket exemption from all taxes and charges and where, for instance, there are government imposed charges for services provided to international air transport (e.g. customs and quarantine fees), then the agreement would need a qualifying statement such as: "not based on the cost of services provided on arrival". Other items that could be covered (but have not been inserted in this Article) are equipment used for reservations and operations, security equipment, cargo loading and passenger-handling equipment, instructional material and training aids.</i>

Article 13 Customs duties (cont'd)	
3. The regular airborne equipment, as well as the materials and supplies normally retained on board the aircraft of a designated airline of any Party, may be unloaded in the territory of another Party only with the approval of the customs authorities of that territory. In such case, they may be placed under the supervision of the said authorities up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.	

Article 14 Taxation	
[Paragraphs 1 through 3, option 1 of 2] 1. Profits from the operation of the aircraft of a designated airline in international traffic shall be taxable only in the territory of the Party in which the place of effective management of that airline is situated. 2. Capital represented by aircraft operated in international traffic by a designated airline and by movable property pertaining to the operation of such aircraft shall be taxable only in the territory of the Party in which the place of effective management of the airline is situated. 3. Where a special agreement for the avoidance of double taxation with respect to taxes on income and on capital exists between any two of the Parties, the provisions of the latter shall prevail. [Paragraphs 1 through 3, option 2 of 2] 1. Profits or income from the operation of aircraft in international traffic derived by an airline of any Party, including participation in inter-airline commercial agreements or joint business ventures, shall be exempt from any tax on profits or income imposed by the Government of each Party. 2. Capital and assets of an airline of any Party relating to the operation of aircraft in international traffic shall be exempt from all taxes on capital and assets imposed by the Government of each Party.	<i>A provision on the taxation of income and capital in agreements is not widespread, in part because such matters may be the subject of a separate treaty on double taxation between the parties. One is presented above in light of the policy of ICAO (Doc 8632) that such an exemption be granted. Since the issue of taxation and taxation agreements between States would be an issue for financial authorities, a provision such as is presented here would require the involvement of those authorities in its formulation and negotiation.</i> <i>In this alternative, paragraphs 1 and 2 address the taxation of income and capital respectively.</i> <i>Paragraph 3 provides for a treaty between the Parties on double taxation to override the provisions of this agreement.</i> <i>This alternative exempts airlines from certain taxes imposed by the Government of each Party rather than specifying where airlines are taxable, i.e., in the territory of effective management of the airline, thereby clarifying the scope of tax exemptions.</i> <i>Paragraph 1 specifically exempts profits and income from inter-airline commercial agreements.</i>

Article 14 Taxation (cont'd)	
[Paragraphs 1 through 3, option 2 of 2] (cont'd) 3. Gains from the alienation of aircraft operated in international traffic and movable property pertaining to the operation of such aircraft which are received by an airline of any Party shall be exempt from any tax on gains imposed by the Government of another Party. [4.* Each Party shall on a reciprocal basis grant relief from value added tax or similar indirect taxes on goods and services supplied to the airline designated by another Party and used for the purposes of its operation of international air services. The tax relief may take the form of an exemption or a refund.]	<i>The exemption is reciprocal though its coverage may vary as indicated by the bracketed text. For example, the Parties may also choose to include import restrictions, or airline supplies such as ticket stock, or computer equipment.</i>

Article 15 Fair competition	
Traditional Each designated airline shall have a fair opportunity to operate the routes specified in the Agreement.	<i>The traditional formulation is based on the phrase in the Convention (Article 44) f) which refers to every contracting State having, “a fair opportunity to operate international air services”.</i>
Transitional Each Party agrees: a) that each designated airline shall have a fair and equal opportunity to compete in providing the international air services governed by the Agreement; and b) to take action to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of a designated airline of each Party.	<i>A limited transitional approach would be to apply the fair and equal opportunity to the routes specified in the annex to the agreement. However, a broader version is provided here, as well as in paragraph b).</i>
Full liberalization Each designated airline shall have a fair competitive environment under the competition laws of the Parties.	<i>Under full liberalization, the Parties’ competition laws would be used to ensure a fair competitive environment for all designated airlines.</i> <i>Some States, while fully supporting the application of competition laws, sometimes refer to them in memoranda of consultations rather than in the actual air services agreement.</i>

Article 16 Capacity	
[Option 1 of 2] Traditional/Transitional/ Full liberalization Capacity offered on air services shall be subject to Article _ (Fair competition). [Option 2 of 2] Traditional [Paragraphs 1 and 2, option 1 of 2] - Any Party may require designated airlines of the other Parties to file their schedules for any route to or from its territory. - Any Party may prevent an increase in capacity on any route to or from its territory which would lead to a serious financial loss to the designated airlines operating services on that route. [Option 2 of 2] Any Party may limit the offer of non-scheduled passenger services on a route on which scheduled passenger service exists, if additional non-scheduled passenger services would endanger the stability of such scheduled service. Transitional Until [an agreed date] any Party may limit the capacity of a designated airline on a route to or from its territory to [an agreed percentage] of the total capacity offered on that route. Full liberalization - Each Party shall allow each designated airline to determine the frequency and capacity of the international air transportation it offers based on commercial considerations of the marketplace.	<i>An alternative, applicable to all three approaches, where a Party believes the amount of additional capacity to be an unfair competitive practice would be to invoke Article _ (Fair competition).</i> <i>Although no predetermination of capacity provision is found in any regional/plurilateral agreement, there are instances of limitations being permitted on capacity in such agreements. These limitations are designed to meet concerns of States with smaller airlines that their services would not be displaced by excessive capacity.</i> <i>A variation on a general right to limit capacity is applying the limitation to a certain type of service, such as non-scheduled passenger services.</i> <i>A time-limited transitional measure is to allow the capacity offered on a route to vary from the traditional 50/50 division to a 60/40 proportion or some other formula. This is not suited to routes with more than two airlines.</i> <i>Each designated airline may offer capacity based on Free determination where individual airlines determine capacity to be offered without government approval or intervention , subject to competition law(s) where applicable.</i>

Article 16 Capacity (cont'd)		
	Full liberalization (cont'd)	
2. No Party shall unilaterally limit the volume of traffic, frequency, or regularity of service, or the aircraft type or types operated by the designated airlines of any other Party, except as may be required for customs, technical, operational, or environmental reasons under uniform conditions consistent with Article 15 of the Convention.		<i>The Parties agree to abrogate their direct control of capacity while retaining the ability to apply non-discriminatory, multilateral controls consistent with the Convention.</i>
3. No Party shall impose on another Party's designated airlines a first refusal requirement, uplift ratio, no-objection fee, or any other requirement with respect to the capacity, frequency or traffic which would be inconsistent with the purposes of this Agreement.		<i>No specific provision on the relationship between capacity and demand is contained in the Free determination method, the competitive pricing and scheduling responses of airlines to market forces being relied on to bring about necessary adjustment. This mechanism may work less effectively where the free play of market forces is impaired or inhibited.</i>
4. No Party shall require the filing of schedules, programmes for charter flights, or operational plans by airlines of the other Party for approval, except as may be required on a non-discriminatory basis to enforce uniform conditions as foreseen by paragraph 2 of this Article or as may be specifically authorized in an Annex to this Agreement. If a Party requires filings for information purposes, it shall minimize the administrative burdens of filing requirements and procedures on air transportation intermediaries and on designated airlines of the other Party.		<i>The Free determination method normally proscribes all forms of discrimination or unfair competitive practices, including predatory pricing, such practices being the cause for possible consultation and remedy. The provision on safeguards for unfair competitive practices addresses this additional and complimentary procedure.</i> <i>Given the wide latitude accorded designated airlines on the capacity they may offer and in view of the increased potential for anti-competitive actions such as "capacity dumping", the Full liberalization approach should be subject to intervention on the basis of the competition laws of the Parties where applicable.</i>

Article 17 Tariffs (Pricing)	
[Option 1 of 2] Traditional/Transitional/ Full liberalization Prices (Tariffs) shall be subject to Article _ (Fair competition). [Option 2 of 2] Transitional 1. The tariffs to be applied by the designated airline or airlines of any Party for services covered by this Agreement shall be subject to the principle of Country of Origin tariff approval. 2. Each Party shall have the right to approve or disapprove tariffs for one-way or round-trip carriage between the territories of the Parties which commences in its own territory. No Party shall take unilateral action to prevent the inauguration of proposed tariffs or the continuation of effective tariffs for one-way or round-trip carriage between the territories of the Parties commencing in the territory of the other Party. [3. Notwithstanding the provisions of this Article, a designated airline shall be free to apply tariffs in respect of carriage on non-scheduled services, as long as these tariffs have been notified to the Parties concerned.] Full liberalization Prices (Tariffs) charged by airlines shall not be required to be filed with, or approved by, any Party.	<i>An alternative, applicable to all three approaches, where any Party invokes Article _ (Fair competition) due to prices charged that may constitute unfair competitive behavior.</i> <i>This transitional approach to approve tariffs between the Parties is based on the principle of country of origin</i> <i>The scope of approval falls primarily on tariffs for third and fourth freedom services which are completely within the regulatory ambit of the concerned Parties.</i> <i>A provision on the approval of tariffs for non-scheduled services is included on an optional basis.</i> <i>Under Full liberalization, tariffs could not be disapproved for any reason. Airlines practices with respect to tariffs could be made subject to the competition laws of the Parties where applicable.</i>

Article 18 Safeguards	
1. The Parties agree that the following airline practices may be regarded as possible unfair competitive practices which may merit closer examination: a) charging fares and rates on routes at levels which are, in the aggregate, insufficient to cover the costs of providing the services to which they relate; b) the addition of excessive capacity or frequency of service; c) the practices in question are sustained rather than temporary; d) the practices in question have a serious negative economic effect on, or cause significant damage to, another airline; e) the practices in question reflect an apparent intent or have the probable effect, of crippling, excluding or driving another airline from the market; and f) behaviour indicating an abuse of dominant position on the route. 2. If the aeronautical authorities of any Party consider that an operation or operations intended or conducted by the designated airline of another Party may constitute unfair competitive behaviour in accordance with the indicators listed in paragraph 1, they may request consultation in accordance with Article _ [Consultation] with a view to resolving the problem. Any such request shall be accompanied by notice of the reasons for the request, and the consultation shall begin within 15 days of the request. 3. If the Parties fail to reach a resolution of the problem through consultations, any Party may invoke the dispute resolution mechanism under Article _ [Settlement of disputes] to resolve the dispute.	<i>The provision on Safeguards will only be relevant and applicable if the Parties have agreed to move to a liberalized, even if not a fully plurilateral “open skies” environment for their designated carriers. The list of airline commercial practices that may be signals of possible unfair competitive practices are indicative only and were developed by ICAO and distributed to Contracting States as a Recommendation. This provision could be used where a group of States has agreed to move toward a less controlled regime but none of the parties has competition laws, they may need to have a mutually-agreed set of descriptions of what would constitute unfair and/or fair competitive practices as a safeguard measure. Given the particular competitive environment in which the airlines will operate and the competition law regimes applicable to their respective territories, the Parties may decide on other indicators of unfair competitive behaviour which could be included in this provision.</i> <i>The “safeguard mechanism” consists of the safeguards provision together with the fourth alternative on dispute settlement, a mediation process based on an ICAO Recommendation which is contained in the Dispute Settlement Article.</i> <i>As an alternative to the safeguard mechanism, Parties could agree on the phasing in of full market access and other provisions, to ease the transition to full liberalization (see Annex IV).</i>

Article 19 Competition laws	
1. The Parties shall inform each other about their competition laws, policies and practices or changes thereto, and any particular objectives thereof, which could affect the operation of air transport services under this Agreement and shall identify the authorities responsible for their implementation. 2. The Parties shall, to the extent permitted under their own laws and regulations, assist each other's airlines by providing guidance as to the compatibility of any proposed airline practice with their competition laws, policies and practices. 3. The Parties shall notify each other whenever they consider that there may be incompatibility between the application of their competition laws, policies and practices and the matters related to the operation of this Agreement; the consultation process contained in this Agreement shall, if so requested by any Party, be used to determine whether such a conflict exists and to seek ways of resolving or minimizing it. 4. The Parties shall notify one another of their intention to begin proceedings against each other's airline(s) or of the institution of any relevant private legal actions under their competition laws which may come to their attention. 5. Without prejudice to the right of action of any Party the consultation process contained in this Agreement shall be used whenever any Party so requests and should aim to identify the respective interests of the Parties and the likely implications arising from the particular competition law action. 6. The Parties shall endeavour to reach agreement during such consultations, having due regard to the relevant interests of each Party and to alternative means which might also achieve the objectives of that competition law action.	<i>The foregoing model clause developed by ICAO is intended to be a comprehensive but adaptable set of procedures wherever two or more Parties have experienced or may experience difficulties in their air transport relations from the application of national competition laws. The provisions place emphasis on notification, cooperation, restraint and the consultation process to avoid and resolve conflicts or potential conflicts. Its use by the Parties would not be relevant, for example, where any Party endorses cooperative airline practices, such as tariff coordination, and no Party has a competition law. Nor is it intended to supplement any existing procedures and the obligations to be included would, of course, have to be agreed by the Parties' competition authorities. In general it seeks to strengthen the machinery for conflict avoidance and resolution and to bring issues in the application of competition law standards to air transport into the regional or plurilateral framework. The clause draws mainly on the concepts and principles set out in detailed Guidelines on this topic that were developed by ICAO concurrently with this model clause (see Doc 9587).</i>

Article 19 Competition laws (cont'd)	
7. In the event agreement is not reached, each Party shall, in implementing its competition laws, policies and practices, give full and sympathetic consideration to the views expressed by the other Party and shall have regard to international comity, moderation and restraint. 8. The Party under whose competition laws a private legal action has been instituted shall facilitate access by each Party to the relevant judicial body and/or, as appropriate, provide information to that body. Such information could include its own foreign relations interests, the interests of each Party as notified by that Party and, if possible, the results of any consultation with each Party concerning the action. 9. The Parties shall cooperate, to the extent not precluded by their national laws or policies and in accordance with any applicable international obligations, in allowing the disclosure by their airlines or other nationals of information pertinent to a competition law action to the competent authorities of each other, provided that such cooperation or disclosure would not be contrary to their significant national interests. 10. While an action taken by the competition law authorities of one Party is the subject of consultations with another Party, the Party in whose territory the action is being taken shall, pending the outcome of these consultations, refrain from requiring the disclosure of information situated in the territory of another Party and that other Party shall refrain from applying any blocking legislation.	

Article 20 Currency conversion and remittance of earnings	
Each Party shall permit airline(s) of another Party to convert and transmit abroad to the airline's(s') choice of State, on demand, all local revenues from the sale of air transport services and associated activities directly linked to air transport in excess of sums locally disbursed, with conversion and remittance permitted promptly without restrictions, discrimination or taxation in respect thereof at the rate of exchange applicable as of the date of the request for conversion and remittance.	<i>In some agreements, this provision could be a separate article or could also be part of a "Commercial opportunities" Article.</i> <i>This ICAO-developed provision to facilitate currency conversion and remittance is a more comprehensive version of a provision found in almost all air service agreements.</i> <i>The term "associated activities directly linked to air transport" would normally include activities closely related to the provision of air services, such as a bus service between the airport and hotels, and where permitted, the provision of ground handling services to other airlines. The term would not include activities such as revenue from hotels, car rentals, investments in local real estate or stocks and bonds, which will presumably be subject to a different conversion and remittance regime. The term "without taxation" refers to taxation on the conversion and remittance, not to national income tax, which is dealt with in the Article on "Taxation".</i>

Article 21 Sale and marketing of air service products	
1. Each Party shall accord a designated airline of another Party the right to sell and market international air services and related products in its territory (directly or through agents or other intermediaries of the airline's choice), including the right to establish offices, both on-line and off-line. 2. [Each airline shall have the right to sell transportation in the currency of that territory or, at its discretion, in freely convertible currencies of other countries, and any person shall be free to purchase such transportation in currencies accepted by that airline.]	<i>In some agreements, this provision could be a separate article or could also be part of a "Commercial opportunities" Article.</i> <i>Some provisions in this Article refer to "designated airlines". Parties would need to consider whether the provisions on the activities contained in this Article should also be extended to all airlines of a Party rather than only designated ones.</i> <i>This ICAO-developed provision provides a simple but fair standard for authorizing airlines to sell and market their services. This clause does not apply to the sale and marketing of air service products through computer reservation systems (CRSs) which is dealt with by a separate provision. The term "on-line office" describes a situation where an office is located in a city or country served by the airline directly; an "off-line office" is located in a city/country not directly served by the airline. Some recent air services agreements add the alternative provision in brackets.</i> <i>The optional text provides assurance to airlines that they can freely sell in convertible currencies accepted for sale by that airline, while not requiring airlines to accept currencies in which the airlines do not deal.</i>

Article 22 Non-national personnel and access to local services	
Traditional and Transitional 1. The designated airline or airlines of one Party shall be allowed, on the basis of reciprocity, to bring into and to maintain in the territory of each Party their representatives and commercial, operational and technical staff as required in connection with the operation of the agreed services. 2. These staff requirements may, at the option of the designated airline or airlines of one Party, be satisfied by its own personnel or by using the services of any other organization, company or airline operating in the territory of another Party and authorized to perform such services for other airlines. 3. The representatives and staff shall be subject to the laws and regulations in force of another Party, and consistent with such laws and regulations: a) each Party shall, on the basis of reciprocity and with the minimum of delay, grant the necessary employment authorizations, visitor visas or other similar documents to the representatives and staff referred to in paragraph 1 of this Article; and b) each Party shall facilitate and expedite the requirement of employment authorizations for personnel performing certain temporary duties not exceeding ninety (90) days.	<i>In some agreements, this provision could be a separate article or could also be part of a “Commercial opportunities” Article.</i> <i>Some provisions in this Article refer to “designated airlines”. Parties would need to consider whether the provisions on the activities contained in this Article should also be extended to all airlines of a Party rather than only designated ones.</i> <i>The traditional and transitional approaches rely on reciprocity which, if interpreted in a quantitative manner, would result in a numerical limitation on the number of airline employees which could be stationed in another Party’s territory.</i> <i>Paragraph 3b) provides for temporary employees for whom the employment and residence requirements could be less extensive than for long-term employees.</i>

Article 22 Non-national personnel and access to local services (cont'd)		
	Full liberalization	
Each Party shall permit designated airlines of another Party to: a) bring in to its territory and maintain non-national employees who perform managerial, commercial, technical, operational and other specialist duties which are required for the provision of air transport services, consistent with the laws and regulations of the receiving State concerning entry, residence and employment; and b) use the services and personnel of any other organization, company or airline operating in its territory and authorized to provide such services.		<i>Paragraph a) of this ICAO provision on non-national personnel, is intended to facilitate the stationing abroad of certain airline personnel – those who perform managerial, commercial, technical and operational duties. The provision is subject to international obligations as well as national laws of the receiving Party concerning entry, residence and employment, which in most cases should be flexible enough to accommodate the obligations of a Party under this provision.</i> <i>Paragraph b) is intended to respond to the need to accommodate the more frequent use of personnel from third countries by air carriers as a result of the increasing number of alliances and the globalization of airline commercial activities. Consequently, it would include the ability to use personnel and services of an airline partner in an alliance or codeshare arrangement, as well as any local company or organization authorized to provide a service.</i>

Article 23 Change of gauge	
Traditional 1. In operating any agreed service on any specified route a designated airline of any Party may substitute one aircraft for another at a point in the territory of another Party on the following conditions only: a) that it is justified by reason of economy of operation; b) that the aircraft used on the section of the route more distant from the terminal in the territory of any Party is not larger in capacity than that used on the nearer section; c) that the aircraft used on the more distant section shall operate only in connection with and as an extension of the service provided by the aircraft used on the nearer section and shall be scheduled so to do; the former shall arrive at the point of change for the purpose of carrying traffic transferred from or to be transferred into, the aircraft used on the nearer section; and its capacity shall be determined with primary reference to this purpose; d) that there is an adequate volume of through traffic; e) that the airline [shall not hold itself out to the public by advertisement or otherwise] [shall not hold itself out directly or indirectly and whether in timetables, computer reservation systems, fare quote systems or advertisements, or by other means], [as providing a service which originates at a point where the change of aircraft is made] as providing any service other than the agreed service on the relevant specified routes; f) that where an agreed service includes a change of aircraft this fact is shown in all timetables, computer reservation systems, fare quote systems, advertisements and other like means;	<i>In some agreements, this provision could be a separate article, could also be part of a “Commercial opportunities” Article, or could be covered in the Route schedule.</i> <i>A provision on change of gauge may be a stand alone article or be dealt with in the route schedule. Generally, a change of gauge enables an airline to operate more economically over international route sectors distant from its own territory by more closely matching the capacity of its flights on such sectors to the lower volumes of traffic to and from its home territory normally expected in the case of the more remote sectors of a long-haul route.</i> <i>In the traditional type of change of gauge formula a change of aircraft is permitted, but subject to a number of conditions including scheduling coordination, size of aircraft, volume of traffic and capacity limitations in the case of a capacity controlled regime. The conditions are aimed at permitting, but nevertheless circumscribing the use of change of gauge. In sub-paragraph e), optional text is given to encompass other modern marketing and selling means than advertising when holding out a change of gauge service. In sub-paragraph h), the optional text provides greater flexibility for the operating carrier by enabling, subject to authorization, more than one flight from the change point. However, the other conditions on change of gauge would continue to apply.</i>

Article 23 Change of gauge (cont'd)	
Traditional (cont'd) g) that the provisions of Article _ of this Agreement shall govern all arrangements made with regard to change of aircraft; and h) that in connection with any one aircraft flight into the territory in which the change of aircraft is made, only one flight may be made out of that territory [unless the airline is authorized by the aeronautical authorities of another Party to operate more than one flight]. 2. The provisions of paragraph 1 of this Article shall: a) not restrict the right of a designated airline to change aircraft in the territory of the Party designating that airline; and b) not allow a designated airline of any Party to station its own aircraft in the territory of another Party for the purpose of change of aircraft. 3. The provisions of this Article shall not limit the ability of an airline to provide services through codesharing and/or blocked space arrangements as provided for in this Agreement [the Route Schedules of this Agreement]. Transitional 1. Each designated airline may on any or all flights on the agreed services and at its option, change aircraft in the territory of the other Party or at any point along the specified routes, provided that: a) aircraft used beyond the point of change of aircraft shall be scheduled in coincidence with the inbound or outbound aircraft, as the case may be; and	<i>Paragraph 2 allows unrestricted change of gauge in an airline's own country but prohibits stationing aircraft in another Party's territory.</i> <i>The provisions of traditional change of gauge articles often cannot be practically applied to codeshare and/or blocked space situations and if these activities are to be permitted, an exception to the change of gauge provisions is needed. The bracketed language will be used when the Route schedules are contained in an Annex to the Agreement. In such cases, States may wish to include change of gauge provisions in that Annex.</i> <i>The transitional approach is a more modern and flexible change of gauge formula, one which is constrained only by conditions regarding scheduling coordination, and size of aircraft when there is more than one aircraft operating beyond the point of change. The references in paragraph 2 to the use of leased equipment and commercial arrangements presupposes that the Parties have also agreed on these matters.</i>

Article 23 Change of gauge (cont'd)	
Transitional b) in the case of a change of aircraft in the territory of the other Party and where more than one aircraft is operated beyond the point of change, not more than one such aircraft may be of equal size and none may be larger than the aircraft used on the third and fourth freedom sector. 2. For the purpose of change of gauge operations, a designated airline may use its own equipment and, subject to national regulations, leased equipment, and may operate under commercial arrangements with another airline. 3. A designated airline may use different or identical flight numbers for the sectors of its change of aircraft operations. Full liberalization On any international segment or segments of the agreed routes, a designated airline may perform international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated; provided that [with the exception of all-cargo services] the transportation beyond such point is a continuation of the transportation from the territory of the Party that has designated the airline and, in the inbound direction, the transportation to the territory of the Party that has designated the airline is a continuation of the transportation from beyond such point.	<i>The full liberalization approach provides extensive operational flexibility in the use of equipment. This type of provision would, for example, enable a hub-type operation to be established at the change point, subject of course to agreement being reached with other relevant partners. The only restriction is that services be conducted in a linear fashion, that is that the flight on the second sector be the extension or continuation of the prior connecting outbound or inbound flight. The bracketed language removes this restriction for all-cargo services.</i>

Article 24 Ground handling	
Transitional [Option 1 of 2] Subject to applicable safety provisions, including ICAO Standards and Recommended Practices (SARPs) contained in Annex 6, each designated airline may choose from among competing providers of ground handling services. [Option 2 of 2] 1. Subject to applicable safety provisions, including ICAO Standards and Recommended Practices (SARPs) contained in Annex 6, each designated airline or airlines shall be permitted, on the basis of reciprocity, to perform its own ground handling in the territory of any other Party and, at its option, to have ground handling services provided in whole or in part by any agent authorized by the competent authorities of another Party to provide such services. 2. The designated airline or airlines of any Party shall also have the right to provide ground handling services for other airlines operating at the same airport in the territory of any Party.	<i>In some agreements, this provision could be a separate article or could also be part of a “Commercial opportunities” Article.</i> <i>All provisions should contain a cross reference to safety provisions. Sentence which indicates ground handling will be covered by Annex 6.</i> <i>Some provisions in this Article refer to “designated airlines”. Parties would need to consider whether the provisions on the activities contained in this Article should also be extended to all airlines of a Party rather than only designated ones.</i> <i>This approach allows a designated airline to choose from among competing providers of ground handling services. This can provide some improvement in services and cost depending on the degree of competition among the providers. This approach is commonly found at airports with a large number of airlines and physical limitations on the number of ground handlers that can be accommodated.</i> <i>This transition permits an airline on the basis of reciprocity to perform its own ground handling, or choose to have those services provided by any agent authorized by the competent authority of the other Party, to provide ground handling services to other airlines operating at the same airport in the territory of the other Party.</i>

Article 24 Ground handling (cont'd)	
[Option 2 of 2 (cont'd)] 3. The exercise of the rights set forth in paragraphs 1 and 2 of this Article shall be subject only to physical or operational constraints resulting from considerations of airport safety or security. Any constraints shall be applied uniformly and on terms no less favourable than the most favourable terms available to any airline engaged in similar international air services at the time the constraints are imposed. Full liberalization 1. Subject to applicable safety provisions, including ICAO Standards and Recommended Practices (SARPs) contained in Annex 6, any Party shall authorize airline(s) of another Party, at each airline's choice, to: a) perform its own ground handling services; b) handle another or other air carrier(s); c) join with others in forming a service-providing entity; and/or d) select among competing service providers. 2. An air carrier is permitted to choose freely from among the alternatives available and to combine or change its option, except where this is demonstrably impractical and also where constrained by relevant safety and security considerations, and (with the exception of self-handling in a) above) by the scale of airport operations being too small to sustain competitive providers. 3. Parties would always be required to take the necessary measures to ensure reasonable cost-based pricing and fair and equal treatment for air carrier(s) of the other Party/Parties.	<i>Paragraph 3 recognizes that ground handling rights may have to be constrained but only due to airport safety or security considerations. It also accords most favoured nation and national treatment to the application of any such constraints.</i> <i>In the full liberalization approach, developed by ICAO, the designated airline has a wider choice with respect to ground handling: it can perform its own, or use those of another airline, provide the services to other airlines, or join with other airlines in providing the services collectively, or choose from among competing providers (see Doc 9587).</i> <i>Depending on their particular circumstances, States should consider the gradual, phased introduction of self-handling and multiple suppliers based, where appropriate, on the size of the airport.</i> <i>At certain airports the number of air carriers and limited physical facilities may not permit all air carriers to perform their own airside ground handling; in such cases, carriers allowed to do so should be selected by objective, transparent and non-discriminatory procedures and competitive, alternative suppliers should be available.</i>

Article 25 Codesharing/Cooperative arrangements	
[Option 1 of 2] Transitional Each designated airline may enter into cooperative marketing arrangements such as joint-venture, blocked space and codeshare with airlines of each Party, provided that the airlines involved hold the appropriate authority and meet the requirements normally applied to such arrangements. Full liberalization 1. In operating or holding out the authorized services on the agreed routes, each designated airline of one Party may enter into cooperative marketing arrangements such as joint venture, blocked space or codesharing arrangements, with: a) an airline or airlines of any Party; b) an airline or airlines of a third country; and c) a surface transportation provider of any country, provided that all airlines in such arrangements 1) hold the appropriate authority and 2) meet the requirements normally applied to such arrangements. 2. The Parties agree to take the necessary action to ensure that consumers are fully informed and protected with respect to codeshared flights operating to or from their territory and that, as a minimum, passengers be provided with the necessary information in the following ways:	<i>Codesharing may be treated in the same manner as other cooperative airline arrangements, requiring the airlines involved to have the appropriate authority (in the case of codesharing, the underlying traffic rights) and meet the requirements normally applied to such agreements. However, for States which may wish to have a specific article on codesharing, the following text is provided.</i> <i>Alternatively, some States may find it preferable that codesharing be addressed in an Article on Commercial opportunities or in the notes to the Route schedule.</i> <i>The transitional approach specifically recognizes the use of these types of cooperative agreements, but limits them to designated airlines of the Parties to the agreement. As a transition measure, the use of codesharing may be limited to specific routes or a specific number of flights which could be further modified by subsequent discussions and/or an exchange of notes.</i> <i>The full liberalization stage includes cooperative arrangements with third-country airlines and surface providers. In most liberalized agreements it also includes wet leasing between airlines of the Parties but for the purposes of this Template Agreement separate provisions on leasing have been included.</i> <i>The phrase, “the requirements normally applied” to the cooperative arrangements would include, in the case of codesharing for example, requirements for consumer notification and protection. This could take the form of an additional article drawn from Doc 9587.</i>

Article 25 Codesharing/Cooperative arrangements (cont'd)	
Full liberalization (cont'd) a) orally and, if possible, in writing at the time of booking; b) in written form, on the ticket itself and/or (if not possible), on the itinerary document accompanying the ticket or on any other document replacing the ticket, such as a written confirmation, including information on whom to contact in case of a problem and a clear indication of which airline is responsible in case of damage or accident; and c) orally again, by the airline's ground staff at all stages of the journey. [3. The airlines are required to file for approval any proposed cooperative arrangement with the aeronautical authorities of all Parties at least ____ days before its proposed introduction]. [Option 2 of 2] Transitional and Full 1. Subject to the regulatory requirements normally applied to such operations by the aeronautical authorities of each Party, each designated airline of another Party may enter into cooperative arrangements for the purpose of: a) holding out the agreed services on the specified routes by codesharing (i.e. selling transportation under its own code) on flights operated by an airline(s) of any Party [and/or of any third country]; and/or	<i>The term in b) "any other document replacing the ticket, such as written confirmation" includes electronic ticketing.</i> <i>The optional filing requirement could serve as a means for the aeronautical authorities to verify that all airlines have the appropriate authority and meet requirements applied to such arrangements. Alternatively, national law and regulations may be used for this purpose.</i> <i>Sub-paragraph a) allows air carriers to hold out their services by selling transportation under their own codes (marketing carriers) on flights operated by airlines of any Party and/or third country carriers (operating carriers), where the bracketed language is included. (To limit codesharing to designated airlines of the Parties, the bracketed language should be omitted.).</i>

Article 25 Codesharing/Cooperative arrangements (cont'd)		
Transitional and Full [Option 2 of 2] b) carrying traffic under the code of any other airline(s) where such other airline(s) has been authorized by the aeronautical authorities of any Party to sell transportation under its own code on flights operated by that designated airline of another Party. 2. Codesharing services involving transportation between points in any Party shall be restricted to flights operated by (an) airline(s) authorized by the aeronautical authorities of that Party to provide service between points in that Party's territory and all transportation between points in such territory under the code of the designated airline(s) of another Party shall only be available as part of an international journey. All airlines involved in codesharing arrangements shall hold the appropriate underlying route authority. Airlines shall be permitted to transfer traffic between aircraft involved in codeshare services without limitation. The aeronautical authorities of any Party shall not withhold permission for codesharing services identified in a) above by the designated airline(s) of another Party on the basis that the airline(s) operating the aircraft does not have the right from such aeronautical authorities to carry traffic under the code of the designated airline(s) of another Party. 3. For the purposes of Article _ (Capacity) of the Agreement, there shall be no limit imposed by the aeronautical authorities of any Party on the capacity to be offered by the airline or airlines designated by another Party on codesharing services.		Sub-paragraph b) allows designated airlines to carry the codes of other airlines. The first sentence of paragraph 2 allows codesharing on domestic segments in a Party's territory, but only as part of an international journey. The last sentence of paragraph 2 prohibits aeronautical authorities of a Party from withholding codeshare approval on the basis that the operating airline does not have the rights from that Party to carry traffic under the code of the designated airline of the other Party. If such withholding were allowed, many potential codeshare opportunities that the provisions are intended to permit could be prevented by the other Party. Paragraph 3 recognizes the importance of clarity with respect to the capacity entitlements permitted for codeshare operations. Often there are no limitations on the capacity that may be offered by marketing air carriers on codeshare services; however, flights operated with their own equipment by carriers that are designated under the agreement are frequently subject to capacity restrictions whether or not another air carrier's code is also used on the flights. The capacity of third country operating air carriers is normally only subject to the provisions of an air agreement between the State of the operating air carrier and the other Party.

Article 26 Aircraft leasing	
	<i>Definitions</i> <i>a) the term “wet lease” means the lease of an aircraft with crew</i> <i>b) the term “dry lease” means the lease of an aircraft without crew</i>

Article 26 Aircraft leasing (cont'd)	
1.* Each Party may prevent the use of leased aircraft for services under this agreement which does not comply with Articles _ (Safety) and _ (Security).	<i>This paragraph treats leased aircraft on the same basis vis-à-vis safety and security as other aircraft operated by designated airlines under the agreement. It makes clear that a party can prevent the use of leased aircraft that do not meet safety and security standards. In implementing this type of paragraph, some States require prior filing of leasing arrangements involving international routes to permit timely action to be taken if the authorities have safety concerns. In some instances, States may use lists of airlines from which aircraft may be leased, and/or lists of airlines from which they may not be leased, based, for example, on ICAO Safety Oversight audit reports or the records of ramp inspections.</i> <i>To meet safety concerns with the use of leased aircraft in certain situations, States may conclude agreements under Article 83 bis to transfer certain responsibilities of the State of Registry under the Convention to the State of the Aircraft Operator in accordance with relevant ICAO guidance.</i> <i>As a practical matter, a Party with safety concerns about a specific situation involving the use of leased aircraft may find it easier, at least initially, to consult with the Party whose airline has leased the aircraft, bearing in mind that the State of the lessor airline may not be a party to the agreement. In considering action under paragraph 1, States should first assess whether their safety concerns with leased aircraft have been addressed by the use of existing ICAO guidance and procedures which make clear the responsibility for continuing airworthiness and the adequacy of operating and maintenance standards in respect of such leased aircraft, taking into account relevant ICAO Standards and Recommended Practices (SARPS) and guidance such as the “Manual of Procedures for Operations, Inspection, Certification and Continued Surveillance” (Doc 8335), the “Airworthiness Manual”(Doc 9760), and the “Guidance on the Implementation of Article 83 bis of the Convention on International Civil Aviation” (Circular 295).</i>

Article 26 Aircraft leasing (cont'd)		
	Transitional	<i>Under this approach, a choice of two options are provided. The main difference is in the treatment of wet-leased aircraft from third countries.</i> <i>Dry leases from non-airline owners, sometimes known as “financial” leases, are virtually universally permitted and are not generally the subject of air services agreements. Some States, however, have included express reference to such leases in their air services agreements. Optional languages [shown in square brackets] are provided within each approach.</i> <i>Some States may, by national law, policy or regulation, or mutual agreement between aeronautical authorities concerned, authorize in advance one or more types of aircraft leases, such as dry leases from any airline, wet leases between airlines of the same Party, wet leases from airlines of another Party, or wet leases from airlines of third countries, subject in all cases to enforcement of applicable bilateral, national and regional safety and security provisions.</i> <i>In some cases, a State may prevent the operation of services by an airline whose fleet is composed of mostly or all wet-leased aircraft from a third country.</i>
[Option 1 of 2] 2. Subject to paragraph 1 above, the designated airlines of each Party may provide services under this agreement by: a) using aircraft dry-leased from any [company including] airlines; b) using aircraft wet-leased from other airlines of the same Party; c) using aircraft wet-leased from airlines of any other Party; and d) using aircraft wet-leased from airlines of third countries,		<i>The term “appropriate authorization” has a meaning broader than the usual “route and/or traffic rights” granted under a bilateral agreement, and includes:</i> <i>i) the economic and safety-related operating authorization that the lessor and lessee airlines have been granted on the routes to be served; and</i> <i>ii) any other national or regional approvals required for the particular type of lease involved.</i> <i>This paragraph covers four leasing situations described in the four subparagraphs. In the case of situation a) [dry leases], such use is permitted</i>

Article 26 Aircraft leasing (cont'd)	
[Option 2 of 2] 3. Notwithstanding paragraph 2 d) above, the designated airlines of each Party may provide services under this agreement by using aircraft wet-leased on a short-term, ad hoc basis from airlines of third countries. Full liberalization 2. Subject to paragraph 1, the designated airlines of each Party may operate services under this agreement by using leased aircraft which meets applicable safety and security requirements.	<i>Paragraph 3 of this second option creates an exception to the traffic rights requirement in paragraph 2 d) in order to deal with unforeseen emergency situations such as those in which an aircraft must be replaced by an aircraft with crew on an urgent basis for a limited period of time, such as, for example, the operation of one or several flights when the original aircraft unexpectedly has a mechanical failure and cannot be operated as a scheduled service.</i> <i>This approach allows the use of leased aircraft of all types as long as such aircraft meets the applicable safety and security requirements.</i>

Article 27 Intermodal services	
Transitional Each designated airline may employ their own or use others services for the surface transport of air cargo. Full liberalization [Option 1 of 2] Each designated airline may use surface modes of transport without restriction in conjunction with the international air transport of passengers and cargo. [Option 2 of 2] Notwithstanding any other provision of this Agreement, airlines and indirect providers of cargo transportation of each Party shall be permitted, without restriction, to employ in connection with international air transportation any surface transportation for cargo to or from any points in the territories of the Parties or in third countries, including transport to and from all airports with customs facilities, and including, where applicable, the right to transport cargo in bond under applicable laws and regulations. Such cargo, whether moving by surface or by air, shall have access to airport customs processing and facilities. Airlines may elect to perform their own surface transportation or to provide it through arrangements with other surface carriers, including surface transportation operated by other airlines and indirect providers of cargo transportation. Such intermodal cargo services may be offered at a single, through price for the air and surface transportation combined, provided that shippers are not misled as to the facts concerning such transportation.	<i>The transition stage includes such facilities as the use of airport customs facilities for surface cargo, transport under bond, carriage to or from any points in third countries and charging a single price for the intermodal transport (provided the shipper is not misled as to the facts of such transport).</i> <i>The inclusion of passengers and the phrase “without restriction” are the principle differences between the transition and full liberalization stages.</i> <i>This provision is aimed at giving full service, capacity and pricing flexibility as well as access to customs and other facilities, to the various parties in an intermodal shipment of cargo.</i>

Article 28 Computer reservation systems (CRS)	
[Option 1 of 3] Each Party shall apply the ICAO Code of Conduct for the Regulation and Operation of Computer Reservation Systems within its territory. [Option 2 of 3] Each Party shall apply the ICAO Code of Conduct for the Regulation and Operation of Computer Reservation Systems within its territory consistent with other applicable regulations and obligations concerning computer reservation systems. [Option 3 of 3] The Parties agree that: a) one of the most important aspects of the ability of an airline to compete is its ability to inform the public of its services in a fair and impartial manner, and that, therefore, the quality of information about airline services available to travel agents who directly distribute such information to the travelling public and the ability of an airline to offer those agents competitive computer reservations systems (CRSs) represent the foundation for an airline's competitive opportunities; and	<i>Some provisions refer to “designated airlines”. Parties would need to consider whether the provisions on the activities contained in this Article should also be extended to all airlines of a Party rather than only designated ones.</i> <i>This alternative is an ICAO model for use, in particular, by Parties which may not have CRS regulations but are willing to apply the ICAO Code of Conduct for the Regulation and Operation of Computer Reservation Systems (see Doc 9587).</i> <i>This alternative applies the ICAO Code, but it is consistent with any other applicable regulations. (These could include the European Union, the European Civil Aviation Conference and the Arab Civil Aviation Commission CRS Codes, or national regulations. The reference to “obligations” recognizes that some States will apply the provisions of the General Agreement on Trade in Services (GATS) which has an Annex on Air Transport Services applicable to CRSs.)</i> <i>This alternative recognizes that some bilateral agreements set out in considerable detail the applicable principles to govern the regulation and operation of CRSs, usually because only one of the parties has extensive CRS regulations which are reflected in the detailed provisions of this type of article. However, given the rapidly evolving nature of airline product distribution, a less comprehensive approach may be more flexible and more easily applied to current conditions.</i>

Article 29 Ban on smoking		
1. Each Party shall prohibit or cause their airlines to prohibit smoking on all flights carrying passengers operated by its airlines between the territories of the Parties. This prohibition shall apply to all locations within the aircraft and shall be in effect from the time an aircraft commences enplanement of passengers to the time deplanement of passengers is completed. 2. Each Party shall take all measures that it considers reasonable to secure compliance by its airlines and by their passengers and crew members with the provisions of this Article, including the imposition of appropriate penalties for non-compliance.		<i>This Article obligates each Party to prohibit smoking on all passenger flights by its airlines between the Parties, and to take reasonable measures to enforce this ban. The need for this provision would lessen as the practice of prohibiting smoking on flights spreads globally.</i>
Article 30 Environmental Protection		
The Parties support the need to protect the environment by promoting the sustainable development of aviation. The Parties agree with regard to operations between their respective territories to comply with the ICAO Standards and Recommended Practices (SARPs) of Annex 16 and the existing ICAO policy and guidance on environmental protection.		<i>States may wish to consider the inclusion of an aviation environmental clause into their air services agreements to take into account the impact of air transport industry on the environment.</i>
Article 31 Statistics		
Transitional	The aeronautical authorities of the Parties shall supply each other, on request, with periodic statistics or other similar information relating to the traffic carried on the agreed services.	<i>This approach may be applied to pre-determination or Bermuda I arrangements but is more simple and does not spell out the purpose of the submission. It is therefore an approach that might be used in more liberal agreements where the need for statistics is not related to capacity control, but rather review.</i>
	Full liberalization	<i>Under full liberalization there would normally be no requirement for the filing of any statistics.</i>

Article 32 Consultations	
Traditional In the spirit of close cooperation, the aeronautical authorities of the Parties shall consult with each other from time to time with a view to ensuring the implementation of and satisfactory compliance with the provisions of this Agreement. Any Party may also request to hold a “High Level” meeting, up to Ministerial level, if and when deemed necessary, to advance the process of consultations. Transitional and Full liberalization 1. Any Party may, at any time, request consultation on the interpretation, application, implementation or amendment of this Agreement or compliance with this Agreement. 2. Such consultations [which may be through discussion or by correspondence], shall begin within a period of 60 [30] days from the date each Party receives a [written or oral] request, unless otherwise agreed by the Parties.	<i>The consultation provision is normally general in scope and some issues, such as aviation security and safety, but also capacity and tariffs, as well as amendment of the agreement, may be subject to separate and specific consultation processes as regards purpose, time-frames and methods (e.g. exchange of documents).</i> <i>The consultation provision is based on a relatively standardized formula although there are a number of different approaches in wording with regard to the purpose of the consultation, the format of the consultation and the form of the request.</i> <i>In this approach, the consultation process can take the form of a regular process with the alternative to escalate the consultations to higher governmental levels.</i> <i>In this approach, the consultation process can be triggered by a request from each Party to address a specific issue. The “request” rather than the “time to time” formulation is more likely to be used in liberalized agreements, where the need for regular consultation may be considered to be less.</i> <i>The bracketed language in paragraph 2 is found in more recent agreements and takes into account modern communication methods which lessen the need for meetings between personnel of the Parties.</i>

Article 33 Settlement of disputes	
Traditional 1. Any dispute which is not settled by consultations or negotiation shall be submitted to arbitration if any one of the Parties in dispute so requests and shall be referred accordingly to one or more arbitrators selected by agreement by the Parties in dispute. If within forty-five days from the date of the request for arbitration the Parties in dispute are unable to agree on the selection of an arbitrator or arbitrators, any of those Parties may request the [official or entity of the regional organization] to nominate a single arbitrator to whom the dispute shall be referred for decision. 2. The decision of the arbitrator or arbitrators shall be binding on all Parties to the dispute. 3. If a Party does not comply with an arbitral decision, the other Parties can adopt measures restricting the operation of the airlines of the non-complying State to achieve compliance.	<i>A principle difference between the dispute settlement process in bilateral and those regional agreements which are based on broader regional organizations is the recourse to, and the role played by, inter alia, supra-national bodies such as the European Commission, the Commission of the Cartagena Agreement (The Andean Pact) and the Council of Ministers of the Common Market for Eastern and Southern Africa, as well as the dispute settlement processes of the broader regional organization which can make binding decisions with respect to disputes between member States which are Parties to a regional agreement or arrangement.</i> <i>Traditional dispute settlement provisions follow closely the bilateral pattern of consultations, negotiation and arbitration but takes into account in its arbitral process the possibility that disputes may involve more than two Parties. In addition, in the event that the Parties in the dispute are unable to agree on an arbitrator, the process provides for recourse to a regional entity which plays an intermediate role in the selection process.</i>

Article 33 Settlement of disputes		
	Transitional and Full liberalization	<i>This alternative developed by ICAO is to address those commercial disputes, such as on pricing, capacity and other competitive practices that arise in a liberalized environment. It could also be used to address disputes beyond unfair practices, for example, disputes related to market access in a less regulatory controlled environment. The mechanism is deliberately broader in scope and could apply to issues not specifically included in the agreement. It is not intended as a substitute for the formal arbitration process, but rather as a means to resolve disputes in a relatively simple, responsive and cost effective manner.</i> 1. Any dispute between two Parties which cannot be resolved by consultations and negotiations, may at the request of either Party be submitted to a mediator or a dispute settlement panel. Such a mediator or panel may be used for mediation, determination of the substance of the dispute or to recommend a remedy or resolution of the dispute. 2. The Parties shall agree in advance on the terms of reference of the mediator or of the panel, the guiding principles or criteria and the terms of access to the mediator or the panel. They shall also consider, if necessary, providing for an interim relief and the possibility for the participation of any Party that may be directly affected by the dispute, bearing in mind the objective and need for a simple, responsive and expeditious process.

Article 33 Settlement of disputes (cont'd)		
	Transitional and Full liberalization (cont'd)	
3. A mediator or the members of a panel may be appointed from a roster of suitably qualified aviation experts maintained by ICAO. The selection of the expert or experts shall be completed within fifteen (15) days of receipt of the request for submission to a mediator or to a panel. If the Parties fail to agree on the selection of an expert or experts, the selection may be referred to the President of the Council of ICAO. Any expert used for this mechanism should be adequately qualified in the general subject matter of the dispute. 4. A mediation should be completed within sixty (60) days of engagement of the mediator or the panel and any determination including, if applicable, any recommendations, should be rendered within sixty (60) days of engagement of the expert or experts. The Parties may agree in advance that the mediator or the panel may grant interim relief to the complainant, if requested, in which case a determination shall be made initially. 5. The Parties shall cooperate in good faith to advance the mediation and to implement the decision or determination of the mediator or the panel, unless they otherwise agree in advance to be bound by decision or determination. If the Parties agree in advance to request only a determination of the facts, they shall use those facts for resolution of the dispute. 6. The costs of this mechanism shall be estimated upon initiation and apportioned equally, but with the possibility of re-apportionment under the final decision. 7. The mechanism is without prejudice to the continuing use of the consultation process, the subsequent use of arbitration, or Withdrawal under Article _.		<i>The two important time-frames built in to the mechanism are 15 days for selection of the experts to constitute the panel, and 60 days for the rendering of a decision or determination. Thus the emphasis is on minimizing legal formalities and procedural time-frames, yet allowing adequate time for the panel to arrive at a decision or determination.</i>

Article 33 Settlement of disputes (cont'd)		
	Transitional and Full liberalization (cont'd)	
8. If the Parties fail to reach a settlement through mediation, the dispute may, at the request of one Party, be submitted to arbitration with respect to another Party in accordance with the procedures set forth below. The Party submitting the dispute to arbitration shall notify all other Parties of the dispute at the same time that it submits its arbitration request.		<i>The use of the mechanism does not preclude the implementation of the arbitration process if that is also provided for in the agreement and if the above mechanism has failed to resolve the dispute to the satisfaction of one or more Parties. Nevertheless, it may be expected that the subsequent use of arbitration should be unnecessary if the Parties have committed to this complementary procedure for resolving certain kinds of commercial and time sensitive disputes.</i>
9. Arbitration shall be by a panel of three arbitrators to be constituted as follows:		<i>In the case Parties fail to reach settlement through mediation, the dispute is referred for decision by a panel of arbitrators. The Article includes a very detailed arbitration procedure for disputes involving more than two parties as well as a procedure for Parties to intervene in an arbitral procedure involving other Parties. Time frames are provided for the various steps in the arbitral process.</i>
a) within 30 days after the receipt of a request for arbitration, each Party to the dispute shall name one arbitrator. Within 60 days after these two arbitrators have been named, the Parties to the dispute shall by agreement appoint a third arbitrator, who shall act as President of the arbitral panel;		

Article 33 Settlement of disputes (cont'd)		
Transitional and Full liberalization (cont'd)		
b) if a Party to the dispute fails to name an arbitrator, or if the third arbitrator is not appointed in accordance with subparagraph a) of this paragraph, either Party may request the President of the Council of the International Civil Aviation Organization to appoint the necessary arbitrator or arbitrators within 30 days. If the President of the Council is of the same nationality as one of the Parties to the dispute, the most senior Vice President who is not disqualified on that ground shall make the appointment. 10. Except as otherwise agreed by the Parties to the dispute, the arbitral panel shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedural rules. The arbitral panel, once formed, may recommend interim measures pending its final determination. At the direction of the arbitral panel or at the request of either of the Parties to the dispute, a conference concerning the precise issues to be arbitrated and the specific procedures to be followed shall be held on a date determined by the arbitral panel, in no event later than 15 days after the third arbitrator has been appointed. If the Parties to the dispute are unable to reach agreement on these issues, the arbitral panel shall determine the precise issues to be arbitrated and the specific procedures to be followed. 11. Except as otherwise agreed by the Parties to the dispute or as directed by the panel, the complaining Party shall submit a memorandum within 45 days of the time the third arbitrator is appointed, and the reply of the responding Party shall be due 60 days after the complaining Party submits its memorandum. The complaining Party may submit a pleading in response to such reply within 30 days after the submission of the responding Party's reply and the responding Party may submit a pleading in response to the complaining Party's pleading within 30 days after the submission of such pleading. The arbitral panel shall hold a hearing at the request of either Party or on its own initiative within 15 days after the last pleading is due.		<i>The arbitral panel determines its procedural rules including the recommendation of any interim relief measures for the Parties pending a final decision.</i>

Article 33 Settlement of disputes (cont'd)		
	Transitional and Full liberalization (cont'd)	
12. The arbitral panel shall attempt to render a written decision within 30 days after completion of the hearing or, if no hearing is held, after the date the last pleading is submitted. The decision of the majority of the arbitral panel shall prevail. 13. The Parties to the dispute may submit requests for clarification of the decision within 15 days after it is rendered, and any clarification given shall be issued within 15 days of such request. 14. In the case of a dispute involving more than two Parties, multiple Parties may participate on either or both sides of a proceeding described in this Article. The procedures set out in this Article shall be applied with the following exceptions: a) with respect to paragraph 9 a), the Parties on each side of a dispute shall together name one arbitrator; b) with respect to paragraph 9 b), if the Parties on one side of a dispute fail to name an arbitrator within the permitted time, the Party or Parties on the other side of the dispute may utilize the procedures in paragraph 9 b) to secure the appointment of an arbitrator; and c) with respect to paragraphs 10, 11, and 13, each of the Parties on either side of the dispute has the right to take the action provided to a Party. 15. Any other Party that is directly affected by the dispute has the right to intervene in the proceedings, under the following conditions: a) a Party desiring to intervene shall file a declaration to that effect with the arbitral panel no later than 10 days after the third arbitrator has been named; b) the arbitral panel shall notify the Parties to the dispute of any such declaration, and the Parties to the dispute shall each have 30 days from the date such notification is sent to submit to the arbitral panel any objection to an intervention under this paragraph. The arbitral panel shall decide whether to allow any intervention within 15 days after the date such objections are due;		

Article 33 Settlement of disputes (cont'd)		
Transitional and Full liberalization (cont'd)		
c) if the arbitral panel decides to allow an intervention, the intervening Party shall notify all other Parties to the Agreement of the intervention, and the arbitral panel shall take the necessary steps to make the documents of the case available to the intervening Party, who may file pleadings of a type and within a time limit to be set by the arbitral panel, within the timetable set out in paragraph 11 of this Article to the extent practical, and may participate in any subsequent proceedings; and d) the decision of the arbitral panel will be equally binding upon the intervening Party. 16. All Parties to the dispute, including intervening Parties, shall, to the degree consistent with their law, give full effect to any decision or award of the arbitral panel. 17. The arbitral panel shall transmit copies of its decision or award to the Parties to the dispute, including any intervening Parties. The arbitral panel shall provide to the Depository a copy of the decision or award, provided that appropriate treatment shall be accorded to confidential business information. 18. The expenses of the arbitral panel, including the fees and expenses of the arbitrators, shall be shared equally by all of the Parties to the dispute, including intervening Parties. Any expenses incurred by the President of the Council of the International Civil Aviation Organization in connection with the procedures of paragraph 9 b) of this Article shall be considered to be part of the expenses of the arbitral panel.		

Article 34 Amendments	
Traditional [Option 1 of 2] Any Party may propose any amendment to the provisions of this Agreement. Such amendment shall only come into force after it has been accepted by all the other Parties. [Option 2 of 2] 1. Any Party may propose an amendment to this Agreement. The text of any such amendment and the reasons therefor shall be transmitted to the [official of the regional organization] who shall transmit them to the Government of each Party. 2. The Parties shall communicate to the [official of the regional organization] whether or not the proposed amendment is acceptable and also to submit any comments thereon. 3. If all Parties agree to the proposed amendment and deposit their respective Instruments of Ratification with the [official of the regional organization], the amendment shall enter into force on the deposit of the last such Instrument of Ratification. Transitional 1. The [body created by the Agreement] shall review and where necessary propose amendments to this Agreement. 2. Such amendments shall come into force when approved by all Parties.	<i>As with the settlement of disputes, for regional air transport arrangements which are based on broader regional organizations [for example, the European Union, the Andean Pact, and the Common Market for Eastern and Southern Africa] the relevant council or commission amends the arrangement through its power to issue new or amended regulations.</i> <i>One of the decisions which States contemplating a regional or plurilateral agreement with a formal amendment provision is what criteria to apply with respect to such amendments coming into force. A traditional approach would require unanimity, all Parties to ratify an amendment before it enters into force.</i> <i>An alternative traditional approach assigns a procedural role in the amendment process to an official of the regional organization. Amendments require the approval of all Parties to come into force.</i> <i>This transitional approach relies on a more simplified amendment process, nevertheless, approval by all Parties is required before the amendment enters into force.</i>

Article 34 Amendments		
	Full liberalization	
1. The Agreement may be amended in accordance with the following procedures: a) if agreed by at least a simple majority of all Parties as of the date of proposal of the amendment, negotiations shall be held to consider the proposal; b) unless otherwise agreed, the Party proposing the amendment shall host the negotiations, which shall begin not more than 90 days after agreement is reached to hold such negotiations. All Parties shall have a right to participate in the negotiations; c) if adopted by at least a simple majority of the Parties attending such negotiations, the Depository shall then prepare and transmit a certified copy of the amendment to the Parties for their acceptance; d) any amendment shall enter into force, as between the Parties which have accepted it, 30 days following the date on which the Depository has received written notification of acceptance from a simple majority of the Parties; and e) following entry into force of such an amendment, it shall enter into force for any other Party 30 days following the date the Depository receives written notification of acceptance from that Party. 2. In lieu of the procedures set forth in paragraph 1, the Agreement may be amended in accordance with the following procedures:	<i>The full liberalization approach provides flexibility, but also potential complexity to the amendment process by providing two procedures for amendment.</i> <i>One procedure is based on acceptance and ratification of an amendment by a simple majority of the Parties attending a negotiation to amend the agreement. The amendment is in force only between the Parties which have ratified it, but other States can accept and ratify the amendment subsequently.</i> <i>The second procedure envisions an amendment which is accepted by all the Parties when it is proposed, but goes into effect only after all Parties have ratified it.</i> <i>Depending on the Parties' initial reaction to a proposed amendment as well as its perceived urgency, Parties proposing an amendment to the Agreement can choose the option most likely to result in a prompt ratification.</i>	

Article 34 Amendments	
Full liberalization a) if all Parties as of the time of proposal of the amendment give written notice through diplomatic or other appropriate channels to the Party proposing the amendment of their consent to its adoption, the Party proposing the amendment shall so notify the Depository, which shall then prepare and transmit a certified copy of such amendment to all of the Parties for their acceptance; and b) an amendment so adopted shall enter into force for all Parties 30 days following the date on which the Depository has received written notification of acceptance from all of the Parties.	
Article 35 Registration with ICAO	
[Option 1 of 2] This Agreement and any amendment thereto shall be registered upon its signature with the International Civil Aviation Organization by <i>(name of the registering Party)</i>. [Option 2 of 2] This Agreement and any amendment thereto shall be registered upon its entry into force with the International Civil Aviation Organization by [name of the Registering Party].	<i>Articles 81 and 83 of the Convention obligate States to register their aeronautical agreements and the above provision formalizes this requirement at the bilateral level. However, in practice, many agreements and amendments are not registered, a fact which has a negative impact on the transparency of the whole process. This clause developed by ICAO includes the requirement to register, upon signature (option 1) or entry into force (option 2), the name of the Party responsible for registering the agreement and is intended to encourage better compliance with the registration requirement.</i>

Article 36 Exceptions	
Traditional Any Party may refuse to authorize additional air services on any route it declares to be of national interest and on which the annual capacity offered does not exceed [an agreed number of seats]. Transitional [Option 1 of 2] By a formal declaration made in writing to the other Parties, any Party shall have the option not to grant and receive the rights and obligations provided for in Article(s) _ for a transitional period not exceeding [agreed time frame]. [Option 2 of 2] Notwithstanding the provisions in the Agreement, the Parties agree to apply the transitional measures set out in Annex _ (Transitional measures) for a period not exceeding [agreed time frame]. Full liberalization In addition to the rights in the Agreement, the Parties to a Protocol to this Agreement also grant the rights for their designated airlines to perform: a) scheduled and charter international air transportation in passenger and combination services between the territory of the party granting the rights and any point or points; and b) scheduled and charter international air transportation between points in the territory of the Party granting the rights.	<i>A traditional approach provides an exception to the agreement which is not time limited. The traditional approach to Article _ (Capacity) also falls in this category.</i> <i>In contrast, a transitional exception is time-limited and may apply to some potential articles such as on Grant of rights, Capacity or Tariff. Therefore, the exemptions from the application of the agreement terminate at the end of the set transitional period. In the first option, a Party informs other Parties in writing that specific rights and obligations in the agreement will not be granted for a period of time.</i> <i>In this option, Parties agree to apply for a limited period of time some measures that they jointly determine in an annex to the agreement.</i> <i>A full liberalization exception in the form of a Protocol to the basic agreement, may provide additional rights, such as Seventh Freedom and limited cabotage, for those Parties willing to exchange them. Note that if the rights are in the agreement then a Protocol would not be needed. A Protocol would be used for those Parties wanting to go further than the whole group.</i>

Article 37 Existing agreements	
Traditional This Agreement shall not affect any bilateral, multilateral or other agreement or arrangements already in force between Parties or between a Party and a non-Party. Transitional [Option 1 of 2] This Agreement shall supersede any bilateral or multilateral air services agreement between the Parties to the extent that those agreements are incompatible with this Agreement. [Option 2 of 2] The provisions of this Agreement do not permit restrictions upon what is established in the air services agreements which the Parties have concluded between themselves. Full liberalization Upon entry into force of this Agreement between one Party and any other Party, any bilateral air services agreement existing between them at the time of such entry into force shall be superseded by this Agreement.	<i>Parties need to decide what will be the relationship between the regional or plurilateral agreement and existing bilateral and other agreements 1) between Parties to the regional or plurilateral agreement, and 2) between Parties and non-Party States.</i> <i>The traditional approach recognizes all existing other agreements both between Parties and between Parties and non-Parties. In effect this subordinates the regional agreement to existing agreements.</i> <i>One transition approach allows provisions of existing agreement which are compatible with the regional agreement to remain in force, while those incompatible with it are superseded. This could raise questions as to which provisions of existing agreements fall in which category.</i> <i>Another transitional approach would tend to treat the flexibility of the regional agreement as a minimum level, with more flexible arrangements permitted in bilateral agreements between Parties.</i> <i>The full liberalization formulation simply replaces any existing bilateral agreements between Parties with the regional or plurilateral agreement. This prevents a dual system of agreements between and among Parties to the regional or plurilateral agreement (where some provisions of the bilateral continue in effect) and eliminates potential questions as to whether certain bilateral provisions are compatible or incompatible with the regional or plurilateral agreement.</i>

Article 38 Review	
1. The Agreement shall be subject to review every [number of years] in order to determine whether any amendments are required. An earlier review may take place if requested by [number of Parties] of the Parties. 2. After consultation with the Parties, the Depository shall notify the Parties of the agreed date and the procedures for the review of the Agreement. Such notice should take place [number of days] days before the meeting.	<i>This article provides the opportunity for a review to take place in order to assess the operation of the Agreement and decide if any amendments are needed to improve its effectiveness. Procedures for the review may be agreed by the Parties.</i>
Article 39 Withdrawal	
1. Any Party may withdraw from this Agreement by giving written notice of withdrawal to the Depository who shall within [agreed number of days] of receipt of the notification of withdrawal notify the other Parties. 2. The withdrawal shall be effective 12 months after receipt of the notice by the Depository, unless the Party withdraws its notice by written communication to the Depository within the 12-month period. [3. If, as a result of withdrawals, the number of Parties to this Agreement is less than [an agreed number], this Agreement shall cease to be in force from the date on which the last of such withdrawals becomes effective.]	<i>In the case of some regional agreements based on broader regional organizations, the notice of withdrawal is provided to an official or entity of the regional organization. A Party, for its own national interest, has the right to withdraw from the agreement by giving notice within a certain time frame.</i> <i>The optional text provides for situations where the withdrawal of a Party may render an agreement ineffective since some agreements may require a certain number of ratifications for the agreement to remain in force.</i>

Article 40 Depository	
1. The original of this Agreement shall be deposited with [the Party or regional entity agreed to], which shall be designated as the Depository of the Agreement. 2. The Depository shall transmit certified copies of the Agreement to all Parties of the Agreement and to any States that may subsequently accede to the Agreement. 3. Following entry into force of this Agreement, the Depository shall transmit a certified true copy of this Agreement to the Secretary General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations [and to the Secretary General of the International Civil Aviation Organization in accordance with Article 83 of the Convention.] The Depository shall likewise transmit certified true copies of any amendments which enter into force. 4. The Depository shall make available to the Parties copies of any arbitral decision or award issued under Article _ (Settlement of disputes) of this Agreement. [5. The Depository shall maintain a centralized register of airline designations and operating authorizations in accordance with Article _ (Designation and authorization), paragraph 4 of this Agreement.]	<i>Parties will need to designate a Depository who is responsible to transmit certified copies of this Agreement and any amendments or protocols to all signatory and acceding Parties.</i> <i>Notification to ICAO by the Depository may be covered in a separate Article on Registration with ICAO.</i> <i>An optional text should the Parties agree to maintain a centralized register of airline designations and operating authorizations.</i>

Article 41 Signature and ratification	
1. The Agreement shall be open for signature by the [Government of the Parties to the Agreement] 2. The Agreement shall be subject to ratification. Instruments of ratification shall be deposited with the Depository.	<i>This article follows usual practice for multilateral agreements where the agreement is to be open for signature by all governments which are listed. The signing could take place at any time, for example, at a meeting of Ministers, or subsequently by duly authorized representatives of those governments.</i> <i>To become a Party to the agreement, a Party government must then also ratify its decision in accordance with its own constitutional procedures. The documents recording ratification are to be deposited with the assigned Depository.</i>

Article 42 Accession	
Traditional [Option 1 of 2] This Agreement shall be open to accession by any Party of (name of regional organization). [Option 2 of 2] This Agreement shall be open to accession by other Parties in (description of region) subject to the approval of all Parties to the Agreement. Transitional 1. This Agreement shall apply, on the one hand to the territories in which the (agreement creating the broader regional organization) is applied and under the conditions laid down in that (agreement) and on the other hand, to the territory of (name of State being included in agreement). 2. The acceding Party shall deposit an appropriate instrument of accession with the Depository. The accession shall take effect on the date of the receipt of such Instrument with the Depository who shall transmit a certified copy to all Party. Full liberalization After this Agreement has entered into force any State which is a Party to the aviation security conventions listed in Article _ (Aviation security) may accede to this Agreement by deposit of an instrument of accession with the Depository.	<i>The traditional approach to adding Parties to a regional or plurilateral agreement based on a broader regional organization is when new States are admitted to the organization.</i> <i>A traditional approach for regional agreements not based on a broader regional organization is to require unanimity of the existing Parties to allow other States in the region to become Parties to the agreement.</i> <i>A transitional approach is to negotiate an agreement for the inclusion of a State not a member of the broader regional organization in the regional air transport arrangement.</i> <i>With full liberalization, the agreement is open to any State which has ratified the aviation security conventions and therefore has the most flexible criteria for expansion of the agreement to other States.</i>

Article 43 Entry into force	
Traditional This Agreement shall enter into force when all signatory Parties have deposited their instruments of ratification with the Depository.	<i>The traditional entry into force provision requires all Parties which have negotiated and/or signed the agreement to ratify it before it comes into force for any Party.</i>
Transitional/Full liberalization 1. This Agreement shall enter into force on the [agreed day] from the date of deposit of the [agreed number] instrument of ratification, and thereafter for each Party [number of days] days after the deposit of its instrument of ratification or accession. 2. The Depository shall inform each Party of the date of entry into force of this Agreement.	

Annex I Non-scheduled/Charter operations	
Traditional 1. The provisions of this Agreement, except those dealing with Traffic Rights, Capacity and Tariffs shall be applicable also to non-scheduled flights operated by an air carrier of any Party into or from the territory of another Party and to the air carrier operating such flights. [Paragraph 2, option 1 of 2] 2. The provisions of paragraph 1 of this Article shall not affect national laws and regulations governing the authorization of non-scheduled operations or to the conduct of air carriers or other parties involved in the organization of such operations.	<i>A provision on non-scheduled operations may be dealt with in a variety of ways and contexts in an agreement. Basically it may be treated as a grant of rights matter or a matter for separate regulatory attention. It may be in the body of the Agreement or in an Annex.</i> <i>A simpler and more direct approach to the grant of rights for non-scheduled operations would be simply to refer in the grant of rights article to the conduct of “international air services” scheduled and non-scheduled. In this way all the provisions of the agreement would be applicable to both scheduled and non-scheduled services.</i> <i>This approach may be used when the Parties anticipate the possibility of non-scheduled operations, need to identify the various administrative and commercial opportunity provisions that would be applied to those operations, but wish to take no position on whether authorization would be granted under their respective national laws and regulations. This provision makes clear that the provisions of the main agreement other than those designed for scheduled air services will apply to non-scheduled air services. Alternatively, this clause could list the Articles in the main agreement that would apply to non-scheduled services, e.g. User Charges, Customs Duties, Safety, Security, etc.</i> <i>The provision leaves to each Party’s national law and regulation the determination of which non-scheduled services would be permitted and under what conditions.</i>

Annex I Non-scheduled/Charter operations (cont'd)	
[Paragraph 2, option 2 of 2] 2. Each Party shall give sympathetic consideration to applications for [non-scheduled flights] [charter flights] between their territories for passengers and cargo in accordance with their respective laws and regulations. Transitional [Option 1 of 3] 1. Each Party shall authorize non-scheduled passenger flights between points at which no established scheduled air services exist. In cases where such scheduled services exist, authorizations shall be granted provided the offer of non-scheduled flights does not endanger the economic stability of existing scheduled services. 2. When series of non-scheduled passenger flights are requested, these must correspond to the definition of “inclusive package tours” and must be carried out on a round trip basis, with pre-established departures and returns. [Option 2 of 3] 1. The airlines of each Party designated pursuant to this Agreement to operate under this Annex shall have the right to operate non-scheduled international air transport over the routes specified and in accordance with the rights granted for scheduled services in this Agreement.	<i>The requirement to give “sympathetic consideration” is not a grant of market access but implies a positive treatment to non-scheduled operations in general or, more specifically charter flights. This provision also reflects the fact that the regulatory regime governing authorization for such operations is generally unilateral, with the destination State or States applying their national rules to any applicant.</i> <i>This approach has no adverse impact on scheduled services.</i> <i>Historically, many States were concerned with preventing non-scheduled passenger services from having an adverse impact on scheduled services and a wide variety of policies and mechanisms were developed to address this issue (see Doc 9587). Three such mechanisms are contained in this text: 1) authorizing non-scheduled passenger services between points not served by scheduled services (usually referred to as “off-route charters”) 2) not permitting non-scheduled passenger services which would adversely impact on scheduled services, and 3) authorizing types of non-scheduled passenger services (in this case inclusive tour charters which include a ground package of services such as hotels, land transport, etc in addition to air transport) which are not regarded as endangering the economic viability of scheduled services.</i> <i>This transitional approach opens the routes in the agreement to non-scheduled services, under the same conditions (e.g. change of gauge) for scheduled services, while off-route non-scheduled services are approved/disapproved on the basis of comity and reciprocity. Depending on the grant of rights for scheduled services this would normally open non-scheduled services to both passengers and cargo.</i>

Annex I Non-scheduled/Charter operations (cont'd)	
Transitional (cont'd) 2. Each Party shall extend favourable consideration to applications by airlines of another Party to carry traffic not covered by this Annex on the basis of comity and reciprocity. [Option 3 of 3] 1. The [designated] airlines of any Party shall be entitled to perform international non-scheduled air transportation to and from any point or points in the territory of another Party, either directly or with stop-overs en route, for one-way or round trip carriage of any traffic to or from a point or points in the territory of the Party which has designated the airline. Multi-destination charters shall also be permitted. In addition, [designated] airlines of any Party may operate charters with traffic originating in or destined for the territory of another Party. 2. Each [designated] airline performing air transportation under this provision shall comply with such laws, regulations and rules of the Party in whose territory the traffic originates, whether on a one-way or round-trip basis, as that Party now or hereafter specifies shall be applicable to such transportation. Full liberalization	<i>The use of “comity and reciprocity” results in the amount and type of off-route charters being based on the Party with the most restrictive view of such charters.</i> <i>In this approach, although the regulatory regime governing non-scheduled operations, and particularly charter type operations, is usually that of the destination State, the Parties to some agreements may choose to stipulate that the rules of the country of origin of the operation should be applied. This should facilitate the conduct of these operations. This is therefore an example of such an arrangement which could be used in a liberal agreement, though it nevertheless requires compliance with rules.</i> <i>Paragraph 1 spells out a broad market access for these operations whereas the second paragraph applies the country of origin rules.</i> <i>The text with bracketed language is used where the Route schedule at Annex___is not city specific and where the Parties designate airlines for non-scheduled services. Without the bracketed language all airlines of each Party (whether or not they are also designated for scheduled services) would be authorized by the other Party to perform the non-scheduled services described in the first paragraph.</i> <i>The full liberalization approach is an option for States which might wish to liberalize non-scheduled services while continuing to regulate scheduled services.</i>

Annex I Non-scheduled/Charter operations (cont'd)	
Full liberalization (cont'd) Section 1 Airlines of each Party designated under this Annex shall, in accordance with the terms of their designation, have the right to carry international charter traffic of passengers (and their accompanying baggage) and/or cargo (including, but not limited to, freight forwarder, split, and combination (passenger/cargo) charters): Between any point or points in the territory of the Party that has designated the airline and any point or points in the territory of another Party; and Between any point or points in the territory of the other Party and any point or points in a third country or countries, provided that, except with respect to cargo charters, such service constitutes part of a continuous operation, with or without a change of aircraft, that includes service to the homeland for the purpose of carrying local traffic between the homeland and the territory of the other Party. In the performance of services covered by this Annex, airlines of each Party designated under this Annex shall also have the right: (1) to make stopovers at any points whether within or outside of the territory of either Party; (2) to carry transit traffic through the other Party's territory; (3) to combine on the same aircraft traffic originating in one Party's territory, traffic originating in the other Party's territory, and traffic originating in third countries; and (4) to perform international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated; provided that, except with respect to cargo charters, in the outbound direction, the transportation beyond such point is a continuation of the transportation from the territory of the Party that has designated the airline and in the inbound direction, the transportation to the territory of the Party that has designated the airline is a continuation of the transportation from beyond such point.	<i>It equates non-scheduled with scheduled services in terms of rights and market access, and without the necessity of compliance with the national regulations of the destination Party, but in the first paragraph limits this to the designated airlines of each party. It also contains a provision for favourable consideration to be given to non-scheduled operations not covered by the rights granted under the first paragraph, for example, services by airlines not designated to provide scheduled services or seventh freedom passenger services.</i> <i>A difference between the previous transitional approach and full liberalization is the ability of the designated airline to choose either the charter rules of its own country or that of another Party for the operation of its non-scheduled services.</i>

Annex I Non-scheduled/Charter operations (cont'd)	
Full liberalization (cont'd) Each Party shall extend favourable consideration to applications by airlines of another Party to carry traffic not covered by this Annex on the basis of comity and reciprocity. Section 2 Any airline designated by any Party performing international charter air transportation originating in the territory of any Party, whether on a one-way or round-trip basis, shall have the option of complying with the charter laws, regulations, and rules either of its homeland or of the other Party. If a Party applies different rules, regulations, terms, conditions, or limitations to one or more of its airlines, or to airlines of different countries, each designated airline shall be subject to the least restrictive of such criteria. However, nothing contained in the above paragraph shall limit the rights of any Party to require airlines designated under this Annex by another Party to adhere to requirements relating to the protection of passenger funds and passenger cancellation and refund rights. Section 3 Except with respect to the consumer protection rules referred to in the preceding paragraph above, no Party shall require an airline designated under this Annex by another Party, in respect of the carriage of traffic from the territory of that other Party or of a third country on a one-way or round-trip basis, to submit more than a declaration of conformity with the applicable laws, regulations and rules referred to under section 2 of this Annex or of a waiver of these laws, regulations, or rules granted by the applicable aeronautical authorities.	

Annex II Air cargo services	
Transitional 1. Every designated airline when engaged in the international transport of air cargo a) shall be accorded non-discriminatory treatment with respect to access to facilities for cargo clearance, handling, storage, and facilitation; b) subject to local laws and regulations may use and/or operate directly other modes of transport; c) may use leased aircraft, provided that such operation complies with the equivalent safety and security standards applied to other aircraft of designated airlines; d) may enter into cooperative arrangements with other air carriers including, but not limited to, codesharing, blocked spaced, and interlining; and e) may determine its own cargo tariffs which shall not be required to be filed with the aeronautical authorities of either Party. 2. In addition to the rights in paragraph 1 above, every designated airline when engaged in all cargo transportation as scheduled or non-scheduled services may provide such services to and from the territory of any Party, without restriction as to frequency, capacity, routing, type of aircraft, and origin or destination of cargo.	<i>Some agreements provide no specific provision on all-cargo operations as the right to operate all-cargo services is usually implicit in the grant of rights wherein the Parties typically grant the right for their designated airlines to transport passengers, cargo and mail on the agreed scheduled international air services. However, other agreements are more specific, referring to “passengers, cargo and mail or in any combination”. The agreement may in the route schedule specify particular routes, including restrictions or flexibility as agreed, for all-cargo services, or the routes may be those exchanged for scheduled passenger services.</i> <i>The purpose of this paragraph is to achieve a fair competitive balance between all air carriers engaged in the transport of international air cargo. Where the main agreement contains a provision which also appears in the Annex (for example, leasing), that provision should be omitted from the Annex.</i> <i>This paragraph provides the Third through the Seventh Freedoms of the air for only all-cargo services operated on a scheduled or non-scheduled basis. The first two Freedoms - overflight and technical stops - are not included as they are normally provided in the main agreement. Operational flexibility is described in general terms and includes those elements generally regarded as important for all cargo operations.</i>

Annex II (cont'd)	
Air cargo services (cont'd) Full liberalization	<i>The Annex on air cargo services is unlikely to be used in full liberalization agreements in which the rights and operational flexibility in this Annex will be in the main agreement.</i>

Annex III Transitional measures	
The following transitional measures shall expire on (date), or such earlier date as is agreed upon by the Parties: 1. Notwithstanding the provisions of Article_ (or Annex_), the designated airline (or airlines) of Party A (or each Party) may (shall) 2. Notwithstanding the provisions of Article_ (or Annex_), the designated airline (or airlines) of Party A (or each Party) may (shall) as follows: a) From (date) through (date),; and b) From (date) through (date), 3. Notwithstanding the provisions of Article_ (or Annex_), the following provisions shall govern	<i>The Annex is an ICAO recommendation which addresses the issues of participation as well as sustainability in moving towards liberalization. It is drawn from existing practices and approaches covering both participation and preferential measures. It consists of one or more of three types of clauses. If these clauses apply to each Party in the same manner, then they would be considered to be participation measures. If not, then they would be regarded as preferential measures.</i> <i>In giving effect to the three clauses of the Annex, the following three paragraphs of the Explanatory notes, excluding the examples given, could be made part of the Annex.</i> <i>This clause is to be used when a particular Article (or Annex) would not take effect immediately but be implemented in a limited way during the transition period. By way of example, the Parties would agree that, notwithstanding the Annex on Route schedules granting each Party unlimited Fifth Freedom rights, the airline(s) of one Party (the developed State) would not be permitted to exercise those local traffic rights fully between the other Party (the developing State) and a third State until a specified date.</i> <i>This clause is similar to the first clause but with phase-in periods. For example, the Parties would agree that, notwithstanding an Article allowing unlimited codesharing, the airlines of each Party would be permitted to expand their third-country codeshare services (frequencies) only in a gradual manner for specified periods.</i> <i>This clause is used when an Article (or Annex) would not take effect immediately and a different scheme would be applied during the transitional period. For example, the Parties would agree that, notwithstanding a tariff Article with no requirement for filing and approval of tariffs, a country-of-origin regime would govern pricing until a specific date.</i>

Annex III Transitional measures (cont'd)	
	<i>The following is an indicative list of subjects that States may use at their discretion as transitional measures in the Annex: the number of designated airlines, ownership and control criteria, capacity and frequency, route and traffic rights, codesharing, charter operations, intermodal services, tariffs, slot allocation, and “doing business” matters such as ground handling. The language in the Annex is a framework, into which the Parties would need to agree on the terms and wording. ICAO Doc 9587 contains material on possible participation and preferential measures.</i>

Annex IV Essential Service and Tourism Development Routes	
1. A Party, following consultations with (or after having consent of) the other Parties and after having informed an airline or airlines operating on the route, may specify an essential air service route or an essential tourism development route linking a point in a remote or peripheral area or a development area in its territory with a point in the territory of the other Parties. On such route or a group of routes, an adequate level of air services set forth in Paragraph 2 of this Annex shall be considered vital for the protection of the lifeline provision for or the economic development of an area, [including tourism route development], but would not be provided if airlines solely considered their commercial interest [or could be provided solely at unreasonably discriminatory, unduly high or restrictive prices]. 2. The Party having specified an essential air service route or an essential tourism development route shall assess an adequate level of scheduled air services [on each route or a group of routes][in a flexible and market-oriented manner], taking into consideration, <i>inter alia</i>, the particular needs for scheduled air services on the route concerned; the level of demand; the availability of connecting air services, third country airlines, non-scheduled operators and other forms of transport; air fares and conditions; and the effect on all airlines operating or intending to operate on the route and adjacent routes. [Non-scheduled air services may also be considered adequate, provided they meet the terms set forth in Paragraph 1 of this Annex.]	<i>The application of an Essential Service and Tourism Development Routes (ESTDR) scheme presupposes the existence of, or the transitional process to a liberalized international market. In exceptional cases the scheme could be applied to non-liberalized routes with tourism potential, as traditional-type air services agreements already provide implicit assistance to operations on such routes by limiting the scope of competition.</i> <i>The Annex gives legal certainty to the parties involved in implementing an ESTDR scheme and also allows Parties to exercise flexibility in how they interpret and administer, for example, the criteria for the route selection and adequate service levels, the tendering procedure for carrier selection, and the contents of contractual arrangements.</i> <i>An example of the flexible approach is to set minimum requirement of capacities only, leaving the airline to decide frequencies, aircraft types, tariffs, etc. Capacity requirements could be defined in terms of numbers of seats from the origin(s) to the destination(s) as X “units of carriage” per week over part or all of the tourism season</i>

Annex IV Essential Service and Tourism Development Routes (Cont'd)	
3. [Notwithstanding the provisions of Article ____ (Capacity) and Article ____ (Pricing)], the Party concerned, following consultations with (or after having consent of) the other Parties, may require an airline operating or intending to operate on an essential air service route or an essential tourism development route to provide air services satisfying the adequate level for a period of up to ____ years. [The Party may require an airline wishing to terminate, suspend or reduce an existing service on the route below an adequate level to file notice at least ____ days prior to the proposed service reduction.] 4. Notwithstanding the provisions of [Article ____ (Capacity), Article ____ (Pricing) and] Annex ____ (Route schedules), if no airline has assumed or is about to assume air services at the adequate level [individually or in the aggregate] on an essential air service route or an essential tourism development route, the Party concerned may invite applications to provide such services, and if necessary and following consultations with (or after having consent of) the other Parties, may limit access to that route to only one airline [excluding airlines of third countries] for a period of up to ____ years, and/or provide the payment of subsidy compensation to the airline. The right to operate such services shall be offered by public tender [either singly or for a group of such routes] to any designated airline entitled to operate [and market] its service between the territories. [Airlines of third countries eligible to operate on the route shall also have the right to tender]. 5. The invitation to tender and subsequent contract shall cover, <i>inter alia</i>, the following information: the required level and standard of services set forth in Paragraph 2 of this Annex; the period of validity of the contract; rules concerning amendment, termination or review of the contract, in particular to take account of unforeseeable changes; and penalties in the event of failure to comply with the contract.	<i>The optional text requires an incumbent airline to file an advance notice of its intention to withdraw or reduce services on the route.</i> <i>The model explicitly provides three options for support: a) a guarantee of a monopoly operation with a subsidy, b) a guarantee of a monopoly without a subsidy, or c) a subsidy without a guarantee of a monopoly operation.</i> <i>It is important to note, that regardless of the duration of the contract, the ESTDR application would not be permanent but transitional or only for a reasonable period of time (mostly for a start-up period) especially on routes serving “development areas”. For instance, if the public demand goes up as a result of network development or through the improvement of the aviation infrastructure, it will make the route less likely a natural monopoly and with no need for regulation.</i>

Annex IV Essential Service and Tourism Development Routes (Cont'd)	
6. The selection of an airline shall be made within a period of ___ months by the Party having issued the invitation of tender, taking into consideration, <i>inter alia</i>, applicants' financial viability, proposed business plan, ways to develop partnerships with the tourism sector, air fares and conditions, and the amount of the compensation required, if any. 7. The Party having issued the invitation of tender may reimburse an airline, which has been selected under Paragraph 6 of this Annex, for the losses as a result of the required operation at the adequate level in accordance with the contract. Such reimbursement shall be assessed as the [expected] shortfall between costs and revenues generated by the service with a reasonable remuneration for capital employed. [No additional subsidy shall be paid for services above the adequate level that the airline may choose to undertake.] 8. Consultations between the Parties shall be arranged in accordance with Article ___ (Consultation) whenever either Party considers that the selection of and/or compensation for an airline are inconsistent with the considerations set forth in Paragraphs 6 and 7 of this Annex, or that the development of and competition on a route is being unduly restricted by the terms of this Annex. [If the Parties fail to reach a resolution of the problem through consultations, either Party may invoke the dispute settlement mechanism under Article ___ (Settlement of disputes) to resolve the dispute.]	<i>The inclusion of both ex ante and ex post facto review-style consultations between States and/or the requirement of getting an advance agreement from other State(s) could be an effective deterrent against a potential risk that States would favour their national airlines and use the scheme excessively.</i>

— — — — —