

WORLDWIDE AIR TRANSPORT CONFERENCE: CHALLENGES AND OPPORTUNITIES OF LIBERALIZATION

Montreal, 24 to 29 March 2003

Agenda Item 2: Examination of key regulatory issues in liberalization

2.1: Air carrier ownership and control

2.2: Market access

2.3: Fair competition and safeguards

2.4: Consumer interests

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REVIEW OF KEY REGULATORY ASPECTS OF LIBERALIZATION

(Presented by Argentina, Aruba, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela)²

SUMMARY

The main objective is to present to the international aeronautical community the position of the LACAC member States regarding each of the topics involved in the review of the key regulatory aspects of liberalization, based on the studies carried out by the Commission on each of the topics to be discussed under this agenda item.

Action by the conference is in paragraph 8.1.

¹ English and Spanish versions provided by Members of the Latin American Civil Aviation Commission (LACAC).

² Members of the Latin American Civil Aviation Commission (LACAC).

REFERENCES

Res. A7-2 - "Collection of information on the operation of international services"
Rec. A10-5 - "Clause to be included in bilateral air transport agreements in order to eliminate double taxation"
LACAC Rec. A13-3 - "Draft model clause to avoid unlawful competition practices"
LACAC Rec. A14-2 - "User rights"
LACAC Res. A15-5 - "Air transport policy criteria and guidelines"
LACAC Res. A15-7 - "Customer service and total quality criteria and guidelines"
LACAC Res. A15-13 - "Methodological guide for estimating airport service and air navigation costs in the region"
LACAC Rec. A15-2 - "Harmonization of member State regulations on the granting of operation permits"
LACAC Rec. A15-4 - "Harmonization of provisions on regional implementation of an electronic ticket issuing system"
Presentations and conclusions of the Seminar on air transport liberalization (Santo Domingo, Dominican Republic, 1-3 October 2002)
ATRP/10 - Report of the tenth meeting of the Air Transport Regulation Panel (Montreal, 13-17 May 2002)
LACAC Web page www.lima.icao.int/clacsec

1. INTRODUCTION

1.1 The study of the main aspects of regulation in liberalization is one of great importance; and, to this respect, the Decisions of the Latin American Civil Aviation Commission (LACAC) as well as other documents and the trend towards liberalization within the Latin American subregions have been considered in the elaboration of this working paper.

1.2 Within this framework, the complexity of the civil aviation activity claiming for coordination of international air transport and the need to consolidate a flexible trend is claimed for. These policies should take into consideration the difference existing between developed and less developed countries in civil aviation matters, as well as principles of fair competence and strengthening of aeronautical activities within a safe, orderly and efficient frame.

1.3 Safety should continue being the priority objective of all entities participating in the aeronautical activity; and, the user should continue being the main objective and support of this sector.

2. OWNERSHIP AND CONTROL OF AIR CARRIERS

2.1 The Latin American Civil Aviation Commission (LACAC) considers that the concepts of "ownership and control" of air carriers and "market access" should not be treated separately. These concepts are not contained in the Chicago Convention and there is no multilaterally-accepted definition. Although the liberalization of "ownership and control" has been extensively debated, no solution has been found that is acceptable for the majority, due to the difficulty of conducting an extensive renegotiation of bilateral agreements.

2.2 Although the trend is towards a more flexible concept of “ownership and control”, many countries still have commercial aeronautical agreements that contain provisions that consider the concept of “incorporation and main address of the airline” as the basic criterion for determining nationality.

2.3 On the other hand, LACAC considers that the unilateral measures adopted by some States regarding safety, and the uncertain security outlook, which results in more stringent technical standards, justify that a special treatment be given to the effects and trends of air transport liberalization, so that they may evolve in keeping with the economic reality of developing countries, since they may restrict the actual possibilities of market access.

2.4 There are several elements related to the “ownership and control” of air carriers that should be taken into account:

- a) The right of carriers to convert and send their income surplus, after deducting local expenditures, to any country in addition to their country of origin, in keeping with the laws of the State in which such income was obtained;
- b) Regarding the nationality of air carriers, the States should recognize those that were established in the designating country, taking into account the applicable laws of the country that accepted the designation;
- c) The Member States recognize the right of carriers to engage and maintain staff of any nationality, subject to the regulations of the State that receives them.
- d) Special attention should be paid to the concerns expressed in Paragraph 3.5 of ATConf/5-Wp/7, presented by the ICAO Secretariat, which are summarized as following: “...the potential emergence of “flags of convenience” in the absence of regulatory measures to prevent them; potential deterioration of safety and security standards with increasing emphasis on commercial outcomes; and possible flight of foreign capital which could lead to less stable operation. There could be impacts on labour, national emergency requirements and assurance of service. Finally, and in the long run there may also be potential implications on airline competition as a consequence of possible industry concentration (i.e the air transport system being dominated by a few mega-carriers through mergers or acquisitions), a reality that exists in most other service sectors ...”; and
- e) The Conference should study the best options for a more flexible exchange of aircraft among States.

3. MARKET ACCESS

3.1 In terms of market access, the Latin American Civil Aviation Commission (LACAC) has been working towards the harmonization of the various sub-regional trends, that is: the Andean Community of Nations (Comunidad Andina de Naciones - CAN), the Association of Caribbean States (ACS), and the member countries of the Fortaleza Agreement, so as to have more flexibility in the granting of traffic rights, market access, and to make air transport more fluid. LACAC, in fostering this type of processes, plays a role in the coordination and harmonization of policies, looking after not only the interests of developed countries but mainly those of less developed countries.

3.2 In view of the above, the Commission has issued a series of guidelines that reflect the position of the region on these matters. In this sense, several elements to be taken into account by the Conference are presented below:

- a) The harmonization of standards that facilitate market access and healthy competition among airlines should be fostered, paying special attention to expediting the procedures for granting operation permits and service concessions, and improving airport facilitation systems;
- b) Abiding by the policy of each State, facilities should be given, in a gradual and orderly fashion, to the granting of third, fourth and fifth freedom traffic rights to air carriers, within a framework of healthy competition, starting at the sub-regional and regional levels;
- c) Abiding by State policy, the granting of permits for non-regular passenger and/or cargo and/or mail air transport should be promoted, provided they do not affect regular flights;
- d) The conditions required for the promotion of regional flights between non-traditional airports should be created within the relevant regulatory framework and based on the subscription of multilateral air transport service agreements, seeking greater liberalization;
- e) Abiding by State policy, air carriers should be given the facilities to freely choose from the various stop service options available, and if rates are fixed, these should be reasonable, cost-based, and provide fair, uniform and non-discriminatory treatment;
- f) The air transport services, by Alliances and other commercial agreements, such as code sharing, should be subject to prior approval by the governments and, when antitrust laws on competition are applicable to such agreements, should not be put objections, in order to maintain cooperation among carriers, when users are to benefit;
- g) The International Air Transport Association (IATA) multilateral inter-airline system should be preserved; and
- h) Member States will promote the prompt and non-discriminatory assignment of slots at busy airports. If deemed necessary, they can suggest the use of the IATA Schedule Assignment Committees.

4. EQUITABLE COMPETITION AND SAFEGUARDS

4.1 In terms of equitable competition and safeguards, the LACAC Member States agree that the best alternative for providing air transport assistance to less developed countries is through the search of safeguards for the air transport liberalization process and of preferential measures to allow the developing countries of the region to maintain a substantial share of air transport, and through fair and equitable competition opportunities for the provision of air transport services within the liberalization process. To achieve this, it is necessary to:

- a) Introduce reciprocity conditions in the agreements, providing for equal and broad opportunities for carriers. Likewise, an attempt should be made to create the conditions for air transport companies to carry out their activities in a competitive environment, including the application of fares, using safeguard or other mechanisms to preserve healthy competition;
- b) Refrain from taking unilateral measures that will affect healthy competition, the users or the carriers, or that are intended to give domestic laws an extra-territorial character, and reject such measures when imposed by other countries;

- c) Recognize the right of carriers to flexibility and healthy competition in the sale and marketing of all services in territories other than their own, both in places where they have and do not have actual operations, provided it is allowed by the laws of the State where such services are marketed;
- d) Insofar as possible, not allow direct and/or indirect subsidies to airlines; and, when necessary, that the State's support be transparent; and
- e) Protect consumers and users (passengers and cargo) within the context of liberalization; and safeguard competition, fighting unlawful behaviour and other market distortions.

4.2 Regarding airport service costs and rates, LACAC issued Resolution A15-13 "Methodological guide for estimating airport and air navigation service costs in the region", which recommended setting aeronautical service rates and charges on the basis of a cost methodology and reinvesting the proceeds in the aeronautical activity itself; likewise, that these costs be established in a way that is completely transparent to all the parties involved.

5. CONSUMER INTERESTS

5.1 Air transport is a public service. The States should see to the attainment of this objective, requiring that the airlines, airport facilities and other entities that have direct relationship with users, comply with the standards and regulations. The rapid development of air transport should meet user expectations and requirements. In this respect, a close follow-up of this development is required, as well as the correction of its possible negative effects.

5.2 Within an environment of growing liberalization, airlines are increasingly subject to the laws of market competition. Pressure to reduce costs in order to maintain profit margins or to avoid bankruptcy should not be in detriment of service or safety.

5.3 Enforcement of ICAO safety standards is an unavoidable responsibility of States *vis-à-vis* their citizens. Special attention should also be paid to computer reservation systems, a marketing tool that affects the degree and efficacy of market access. Although they facilitate passenger service, they may become a structural hindrance which might lead to unlawful competition practices. This activity must necessarily be transparent to passengers in their search for information, reservations and purchase of tickets. Rates must be fair and proportional to the service rendered.

5.4 The States should make sure that the user is the object of the public service and the main support of the commercial air transport industry. In this sense, they should try to safeguard the right of users to all possible guarantees in terms of the necessary protection, attention and information and to a safe, orderly and efficient commercial air transport service. Pursuant to this criterion, LACAC has issued Recommendation A14-2 "User rights".

5.5 Likewise, in order to obtain an optimum air transport and airport service, facilities should be given for the establishment of aeronautical service quality control systems, applying a total quality approach, and all users, of both airlines and airports, should be taken into account. In this regard, LACAC has issued Resolution A15-7 "Customer service and total quality criteria and guidelines".

5.6 With respect to user rights and duties, all possible guarantees should be provided in order to offer the necessary protection, attention and information. Likewise, the development of an infrastructure that meets passenger, cargo and mail transport facilitation standards should be encouraged.

5.7 Furthermore, when drafting standards and regulations on user rights, the States should try to keep a proper balance between such rights and the cost involved.

5.8 Code sharing operations should be straightforward, and travelers advised accordingly. In this sense, the right clauses should be developed for their inclusion in bilateral and multilateral air transport agreements.

5.9 As agreed on an international level, airlines are responsible for contracting the corresponding insurance to protect both passengers and third parties.

5.10 The availability of adequate airport capacity is a key element for greater and better facilitation of customer service. Users and the surrounding areas should be the main beneficiaries of the expansion of facilities to respond to the increased passenger volume, the challenges posed by noise and harmful gas emission, and the need for planning.

5.11 The privatization or marketing of airport facilities should not affect the user, nor the service, nor safety.

6. PRODUCT DISTRIBUTION

6.1 In this respect, the States should use the ICAO code of conduct, and introduce a model clause on Computer Reservation Systems (SRC) in bilateral and multilateral air transport agreements, avoiding, in this manner, discrimination when accessing them.

6.2 Furthermore, as pointed out in LACAC Recommendation A15-4 “Electronic fare posting system”, the States should electronically post fares on the internet and web pages, so that they may be accessed by all air transport users.

7. TRANSPARENCY

7.1 The States should fully apply Article 83 of the International Civil Aviation Convention, which sets forth the obligation of contracting States to immediately register all agreements before the ICAO Council, the same which will be disclosed to the public as soon as possible.

7.2 Within the framework of LACAC, this is an on-going task, pursuant to Resolution A7-2, “Collection of information on the operation of international services”. This would facilitate a constant review of the instruments related to the status of international air transport.

8. ACTION BY THE CONFERENCE

8.1 The Conference is invited to take note of this information, exchange opinions and consider the suggestions submitted by LACAC.

— END —