



## DIRECTORS GENERAL OF CIVIL AVIATION-MIDDLE EAST REGION

### Fourth Meeting (DGCA-MID/4) (Muscat, Oman, 17-19 October 2017)

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#### Agenda Item 9: Air Transport

#### AIRSPACE LINEARIZATION, ITS ASSOCIATED PROVISIONS, AND THE RECENT DEVELOPMENTS IN FAIR COMPETITION ON INTERNATIONAL AIR TRANSPORT

(Presented by AACO)

#### SUMMARY

In this working paper, we express our opinion on the developments in the work of the ICAO's Air Transport Regulation Panel. We pay special attention to the guarantees for fair competition in international air transport as part of the Panel's work, both bilateral and multilateral talks, and the unilateral steps taken in this regard.

<b>STRATEGIC OBJECTIVES:</b>	Guaranteeing the expansion of air transport options available to the consumer while adopting international air transport policies and in light of both bilateral and multilateral relations in aviation industry.
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### 1. INTRODUCTION

1.1. Discussions are underway within the ICAO's Air Transport Regulation Panel on several key issues, including the liberalization of market access and the potential benefits of the liberalization. Specifically, the ICAO's Air Transport Regulation Panel is developing a multilateral agreement to liberalize air transport, where technical and administrative provisions have been agreed on so far. However, there is still a divergence of views on traffic rights, the nature of the agreement, the provisions related to fair competition, etc.

1.2. With regard to traffic rights, AACO believes that: firstly, the agreement should include 3<sup>rd</sup> and 4<sup>th</sup> Freedom traffic rights, fair competition provisions, etc. Secondly, 6<sup>th</sup> Freedom traffic rights should not be mentioned separately because it has not yet been recognized by ICAO as an independent freedom traffic right; it is rather viewed as an integration of both 3<sup>rd</sup> and 4<sup>th</sup> Freedom traffic rights.

Thirdly, the sovereign right of States to hold bilateral consultations on freedoms should be maintained on the basis of this text, which does not impose restrictions on freedoms.

1.3. **With regard to the nature of the agreement**, AACO thinks it would be better that the agreement will be made complementary to the bilateral agreements so as to modify certain provisions of the existing agreements instead of concluding a comprehensive agreement that incorporates all the provisions usually found in bilateral agreements and thus replaces them all together.

1.4. With regard to the provisions that guarantee fair competition among aviation companies, there are several recent developments concerning fair competition in air transport. In general, some government authorities have recently adopted protectionist policies in favor of their aviation companies; they tried to impose provisions on fair competition, transparency, and other protectionist provisions during bilateral and multilateral negotiations and in international forums as a unilateral measure. The following are the latest developments in this regard:

## **2. DISCUSSION**

### **The Work of ICAO's Air Transport Regulation Panel**

2.1. A number of parties seek to influence ICAO's policy and enhance their role with regard imposing the concept of competition in the international air transport. They particularly do so by attempting to add provisions related to protectionist measures in the Multilateral Agreement. In so doing, they open the airspace subject to the work of the ICAO Air Transport Regulation Panel and use the protectionist measures to grant or withhold air traffic rights. In our view, the concept of fair competition differs from one State to another because of the different economic and social norms between States and because of the different level of development of the markets and aviation companies in those countries. We also believe that the existing mechanisms developed by the ICAO for fair competition are sufficient as a global framework to be taken as a model. It is the sovereign right of States to decide whether they include provisions on fair competition in bilateral or Multilateral Agreements.

### **Bilateral negotiations**

2.2. In bilateral negotiations, some countries, particularly European one, have associated granting air traffic rights with the inclusion of fair competition provision in air transport services agreements as well as in multilateral negotiations. AACO believes that any bilateral or multilateral discussions on ensuring fair competition must take into account what follows:

- The historical development of aviation companies including the maturity of the markets involved.
- Reciprocity in granting traffic rights between the parties.
- Including the subject of granting time slots and airport infrastructure into discussions.
- Discussion of fair competition should be conducted within the framework of market opening.
- Fair competition discussions should aim at increasing consumer air transport choices rather than shrinking them.

### **Unilateral laws**

2.3. The European Commission has submitted a bill to the European Parliament and the EU Council of Ministers that impacts various civil aviation parties in non-European countries, including aviation companies, civil aviation authorities, aerodrome operators, ground service providers, and others. If adopted, the law would allow the European Commission to conduct investigations on various air transport activities in non-European States if a European party complains about what the European party sees as a practice that affects fair competition between European aviation companies and non-European aviation companies. If, at the end of the investigation, the Commission finds that there are practices that do not conform to the European definition of fair competition, it may impose fines or other measures, such as suspending air transport services on the concerned aviation companies of the non-European State to the European Union or the concerned European State.

2.4. In this regard, AACO believes that there must be full clarity in dealing with the issue of fair competition between European and non-European countries. This means that the issue must be dealt with through bilateral procedures, through comprehensive air transport agreements between the European and non-European countries, or through a law that respects international standards and procedures. In fact, addressing the issues related to competition through a number of instruments, whether laws or conventions, will lead to legal uncertainty and open the door to abuse of these instruments.

2.5. Any instrument used in this area should take into account the difference between States in terms of social norms. Furthermore, it should comply with legal standards and procedures and be formulated in a manner that includes fair and balanced definitions consistent with international treaties and standards; it should not override the sovereignty of States when implemented. We believe that taking any unilateral measure instead of conducting bilateral negotiations would have a negative impact on the consumer, the network of air transport, the bilateral relations between countries, and the economy in general.

2.6. At the same time, it is necessary for such laws to take into account that air transport companies in non-European States have different levels of maturity, cost structure, and ownership system. It is therefore essential that the law should not be biased against aviation companies in other States based on those elements.

2.7. On the other hand, the suspension of third-party airline services for reasons other than safety or security is contrary to the objectives of the Chicago Convention. According to ICAO, air services may be only suspended if the other State does not follow ICAO's safety standards, if the aviation company's status or ownership has changed, or if the airline has not complied with local air traffic safety rules. Moreover, we have never seen such measures in bilateral air service agreements. The usual method of bilateral consultations and dialogue to deal with such practices or conflicts in air transport relations has proved effective in resolving outstanding issues.

**3. RECOMMENDATIONS**

3.1 AACO recommends that Directors General of Civil Aviation in the Middle East to:

- a) Work within the framework of the ICAO Committees while considering the points we have raised on the provisions of the Multilateral Agreement to Liberalize Air Transport as formulated by the ICAO's Air Transport Regulation Panel.
- b) Consider the five points we have included as a framework for fair competition talks if the civil aviation authorities face a proposal to introduce a clause on fair competition in either bilateral or multilateral negotiations.
- c) Take cognizance of the recent developments at the EU level concerning the fair competition law proposed by the European Commission and see how the UE will view it.

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