



International Civil Aviation Organization

WORKING PAPER

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ASSEMBLY — 37TH SESSION

ECONOMIC COMMISSION

Agenda Item 49: Liberalization of international air transport services

**DEVELOPMENTS IN THE PROCESS OF LIBERALIZATION OF INTERNATIONAL AIR
TRANSPORT SERVICES IN THE LATIN AMERICAN REGION**

(Presented by the 22² member States of the Latin American Civil Aviation
Commission)

EXECUTIVE SUMMARY

This paper provides information to the Assembly on the progress made in the process of liberalization of air transport services in the Latin American Region within the framework of LACAC.

<i>Strategic Objectives:</i>	This working paper relates to Strategic Objective D — Efficiency — Enhance the efficiency of aviation operations.
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<i>Financial implications:</i>	Nil.
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<i>References:</i>	LACAC Strategic Plan Draft LACAC Multilateral Open Skies Agreement
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¹ English and Spanish versions provided by LACAC.

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

1. INTRODUCTION

1.1 Liberalization, as a trend in air transport in Latin America, started when State-owned airlines and the centralised economies that supported them came to an end. Since then, liberalization has been growing in the region and co-exists with aviation policies that are more conservative or that are moving towards liberalization.

1.2 As a result of the global trend, the State has stopped managing airlines in several countries of the Region and has started to deregulate supply and fares, and the activities left behind by the State have been taken over by the market.

1.3 This process has evolved at a different pace in the various countries of Latin America and has not been devoid of problems.

1.4 For some aeronautical authorities, the liberalization of air transport markets still represents a risk of ruinous competition and they would like to maintain the traditional system of regulating supply and setting prices. Others have understood that regulations and restrictions hamper growth, while free competition encourages carriers to improve services and create new markets. And in between the two are those authorities that have chosen to gradually introduce flexibility into their policies in order to progressively adjust to the new scenarios.

1.5 In this process, aeronautical authorities have tried not to interfere with excessive or unnecessary regulations and restrictions that impair the operation of the market and, in turn, air carriers have avoided unfair behaviours, such as offering rates that are below the cost, or over supplying.

1.6 It has also been necessary in the Region to review the criterion of “substantial ownership and effective control” for purposes of granting, denying or revoking an operations permit to a foreign airline designated by another country.

1.7 Within a global economy, it has been deemed advisable to reduce restrictions to access by international capital, that is, to eliminate or moderate the ownership status or requirement as the only or main criterion for airline designation or authorisation, in such a way that all airlines may freely choose their structure, based on their capital needs and strategies. Nevertheless, the elimination of such restrictions has not jeopardised the capacity of designating authorities to exercise regulatory control, especially with respect to security and safety.

2. MULTILATERAL FREE SKIES AGREEMENT

2.1 Finally, in 2010, a very important initiative in Latin America came to fruition. Within the framework of the Latin American Civil Aviation Commission (LACAC) an Ad Hoc Group was established with the purpose of drafting and proposing to the Region a “Multilateral Free Skies Agreement”. This Group was made up by Chile, as spokesperson, and Brazil, Costa Rica, Cuba, Guatemala, Panama and the Dominican Republic.

2.2 The draft was developed by the spokesperson, based on a text originally prepared by the Secretariat and Panama, as Focal Point for the Macro-task on “Transport and Air Policy”, always taking into account the liberal-style multilateral agreement model developed at the last ICAO Global Air

Transport Conference, introducing the adjustments that the Latin American reality required and keeping well in mind the contributions made by Brazil, Guatemala, Dominican Republic and Uruguay, which have been very valuable and, to a large extent, are embodied in the draft.

2.3 The draft is made up by a Preamble and 40 articles.

2.4 In terms of designations, it envisages the multiple designation of airlines. For airline designation, a substantial ownership and effective control of the same is not required so as not to hinder foreign investment, but airlines must be established in the territory of the Party State that designates them, they must be based in the territory of that State, they must be under the regulatory control of that Party State, and that Party State must comply with safety and security provisions. The same reasons are used as a basis for denying, revoking or limiting an authorisation.

2.5 In terms of capacity, the Parties in this draft allow the designated airlines to freely determine the capacity of the international air transport services they offer, based on commercial considerations of the market.

2.6 In terms of competition, the draft establishes that, within the framework of the competition laws of each Party, the designated airlines must be able to operate in a healthy and fair competitive environment when operating routes under the Agreement.

2.7 Regarding fares, the designated airlines may freely set their air transport rates, based on market considerations.

2.8 The draft contemplates all the commercial facilities and opportunities inherent to liberal agreements, in terms of: sale and marketing of air transport services, foreign currency exchange and transfer of earnings, hiring of foreign personnel, access to local services, use of ground handling services, code sharing and cooperation agreements among airlines, changes in route capacity, aircraft utilisation contracts and use of other modes of transportation.

2.9 The draft includes the right to formulate reservations, in the belief that it is an advantage that will probably facilitate the ratification and accession to the Agreement. It was also noted that the reservations formulated when signing, ratifying or accessing to the Agreement may be lifted at any time, which adds flexibility to this formula.

2.10 Lastly, in terms of traffic rights, full traffic rights are granted among Party States and to third countries, that is, up to the sixth freedom. Separate paragraphs grant the seventh freedom for freight services alone; the seventh freedom for combined passenger and cargo services; and the right to cabotage, that is, the eighth and ninth freedoms.

2.11 Recently, the LACAC Executive Committee approved the draft prepared by the Ad hoc Group and will submit it to the consideration of the next LACAC Assembly in November this year.

2.12 The countries of the Region that currently have liberal commercial aviation policies are expected to sign this Multilateral Free Skies Agreement as soon as it is approved by the LACAC Assembly, and those countries that cannot do it now are expected to adhere to it in the future, when the liberalization of international air transport, which continues growing all over the world, will not be in conflict with their legitimate aviation policies.