



International Civil Aviation Organization

**WORKING PAPER**

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**ASSEMBLY — 36TH SESSION**

**ECONOMIC COMMISSION**

**Agenda Item 40: Regulation of international air transport services**

**FAIR COMPETITION AND SAFEGUARDS**

(Presented by Saudi Arabia)

**EXECUTIVE SUMMARY**

This paper addresses the ideal methodology to implement fair competition and safeguards in the competitive environment of liberalized air transport.

**Action:** The Assembly is to invite ICAO to consider the establishment of a global multilateral regulatory framework for the rules of fair competition and safeguards in the field of international air transport.

<i>Strategic Objectives:</i>	This working paper relates to Strategic Objective D.
<i>Financial implications:</i>	Not applicable.
<i>References:</i>	

**1. INTRODUCTION**

1.1 The traditional concepts of fair competition, safeguards, and equal opportunities for air carriers in the international air transport market have gradually spread, as the liberalization of the air transport sector started. In order to achieve a fair competition, especially in cases where the States have approved the principle of free competition, specific code of conduct and competition rules have to be observed. The role of the governments that adopt such principles of liberalization should be limited to facilitation and organization rather than full partnership in the development of the international air transport.

1.2 In the context of the emerging system, the forces of the market providers the required link between service providers and consumers. In addition, appropriate independent bodies involved in the

<sup>1</sup> Arabic version provided by Saudi Arabia.

organization of competition play a vital role in monitoring the activities of the forces of the market, in order to ensure the long term sustainability of the system. As years go by, as was the case in other economic sectors, the processes of liberalization and implementation of competition rules and policies have developed into a mutual support relationship. Moreover, States concerned with the liberalization of air transport have agreed to move toward a less restricted system of market access through bilateral agreements. A feeling of the continuing need for a collective agreement on a common set of rules and a description of what should be called fair and/or unfair competition prevailed. Such an agreement was necessary to provide a gradual, continuous and developing methodology to ensure partnership, adaptation and fair competition.

1.3 A successful shift towards a liberalized air transport system relies heavily on the development of usable mechanisms that would ensure the effective and sustainable participation of all the States in the process, especially the developing countries. Although a difference in the level and nature of participation of various air carriers is expected, the importance of service safeguards becomes prominent, especially in smaller markets.

## **2. POSSIBLE WAYS TO IMPLEMENT COMPETITION RULES AND SAFEGUARDS IN LIGHT OF LIBERALIZATION**

2.1 Given the different stages and methodologies of liberalization in various countries and the disparity in the development and implementation of competition laws, there appear the following three remedial scenarios:

- a) Two parties of a bilateral agreement (or more than two parties of a multilateral agreement) adopt a liberalized environment of international air transport, where competition rules and policies exist, even in the presence or absence of a separate bilateral cooperation agreement on certain competition-related issues.
- b) The parties agree, through a bilateral or a multilateral agreement, to move towards a liberalized environment, even if it was not a full “open sky” environment for carriers. However, there could be a need for an institutional structure to ensure real and effective competition and participation by carriers, regardless of their sizes or competitive capabilities.
- c) Parties to bilateral agreements, which are not willing to liberalize market access, should support liberalization as a desirable objective in the long-term and should prefer a gradual, continuing and increasing approach that ensures participation, adaptation and fair competition.

## **3. ANALYSIS AND CONCLUSION**

3.1 The States of the first scenario generally adopt policies that foster relations between the liberalization of international air transport and the enforcement of competition rule through bilateral or multilateral agreements on procedural and substantial aspects of competition. Such States could also satisfy their needs for a separate set of guidance material in the field, through more reliance on analyses and adopted standards for each individual case.

3.2 The relationship between the liberalization of international air transport and the implementation of the rules of competition could still be under development in the States of the two other scenarios. This requires such States in the phase of transfer to adopt a certain institutional arrangement such as a mechanism of safeguards and/or an agreement on the rules of competition. They must also use another effective tool such as a conflict resolution mechanism.

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