

## **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**

#### **AIRLINE VIEWS ON LIBERALIZING OWNERSHIP AND CONTROL**

(Presented by International Air Transport Association)

##### **SUMMARY**

The liberalization of bilateral ownership and control rules would be a major step towards creating a global aviation industry. While it is recognized that some States may not wish to take this step, those that are willing to do so should be encouraged to make further progress to open markets. The industry proposes distinguishing between commercial control conferred by ownership and regulatory control exercised by licensing authorities. It also seeks removal of restrictions on ownership while retaining regulatory control as the responsibility of the State(s) of designation.

Action by the Conference is in paragraph 6.1.

### **1. INTRODUCTION**

1.1 There is a growing consensus that liberalization of airline ownership and control rules has become the most important regulatory issue facing airlines and government regulators at the present time.

1.2 The reason it is so important is that airlines, in an increasingly liberalized environment, need the same access to world capital markets and the same flexibility to structure their operations to serve global markets as those enjoyed by corporations in other sectors.

1.3 IATA urges governments to take advantage of the Fifth ICAO Worldwide Air Transport Conference (AT Conf/5) to reach consensus on a widely acceptable approach towards the liberalization of

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<sup>1</sup> Arabic, French and Spanish versions provided by the International Air Transport Association (IATA)

airline ownership and control<sup>2</sup>. The means chosen should be capable of quick and flexible application in order to put together a practical nucleus of States at an early stage.

## 2. BACKGROUND TO THE ISSUE

2.1 The great majority of bilateral air service agreements provide the contracting parties with the right to withhold, revoke or impose conditions on an operating licence issued to a designated airline of the other party when it is not substantially owned and effectively controlled by the designating State or its nationals. States have the option not to exercise this right.

2.2 The notions of *substantial ownership and effective control* are not found in the Chicago Convention and there is no single multilaterally agreed definition. These concepts have evolved over the past fifty years to protect national interests. These interests include, but are not limited to, safeguarding national carriers, national security, provision of essential services, economic and trade interests and providing a means of ensuring reciprocity in bilateral relations.

2.3 Although the liberalisation of ownership and control has been long debated, a generally accepted solution has not been found because of the difficulty of any widespread renegotiation of bilaterals that might carry the risk of losing hard-won national benefits. This has also been a reason for resistance to any move to a multilateral regime such as the General Agreement on Trade and Services (GATS).

2.4 Despite this, there are many examples of airlines that are not majority-owned or controlled by nationals of the designating State being allowed to operate under existing bilateral arrangements. It is difficult to identify any adverse effects of such exceptions to the normal bilateral provisions.

2.5 To be widely accepted, any more liberal principles must overcome concerns that they could provide an unacceptable or *free-rider* means of gaining market access, degrade safety through a confusion of responsibilities, facilitate *flags of convenience* or lead to *social dumping*.

2.6 To date, liberalized approaches have focused on broadening Ownership and Control provisions by introducing concepts relating to community of interest, principal place of business and a *strong link* with the designating state. These approaches have attempted to get around the obstacles mentioned above.

2.7 However, none of these approaches have gone far enough to represent a breakthrough by gathering the support of sufficient States to make significant progress and to enable airlines to act like other global business enterprises.

## 3. BASIS FOR A SOLUTION

3.1 IATA invites States at AT Conf/5 to endorse a broad-based liberal solution that respects the interests of all States, including those that wish to retain current ownership and control provisions.

3.2 Such a solution, on a bilateral or preferably a plurilateral basis, would allow a State to choose those States with which it is prepared, by reasons of trust, national security, comity and shared interest, to

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<sup>2</sup> Under Air Carrier Ownership and Control, AT Conf/5 will also consider designation and authorisation; right of establishment; inward investment; management; leasing; alliances, codesharing and franchising; and safety aspects.

treat the ownership of airlines serving its country in the same manner as it treats other commercial undertakings.

3.3 Expedited implementation of new liberal rules could be achieved through the exchange of side letters to an existing Bilateral Air Service Agreement or by means of a Diplomatic Note.

#### 4. PROPOSAL

4.1 There are three features to IATA's proposal:

- a) *Commercial* control of airlines should be separated from *regulatory* control. For the reasons outlined above, there are strong arguments for removing the bilateral restrictions on the commercial control of an airline by nationals of another State. The same arguments apply to the removal of ownership limitations, which are increasingly seen as being arbitrary and of little relevance in the global marketplace of the 21st Century.

However, to ensure the continuation of civil aviation's high standards of safety, and to avoid the risk of adverse developments such as 'flags of convenience' which have affected other industries, regulatory control of airlines must remain the responsibility of the designating States. Regulatory control in this context involves the supervision and licensing of an airline in areas such as the issuing of an Air Operators Certificate, Airworthiness Certificate and crew licenses, and in certain cases also the establishment of tax liability.

- b) IATA recognizes that while the broad principles of liberalization may be relatively easy to identify, many details would require careful consideration. It is not IATA's intention that a more liberal approach to the ownership and control provisions of bilateral air services agreements should be used to avoid accepted standards in areas such as safety, security and labour protection, among others.

As to safety regulation, the implementation of the relevant ICAO/ECAC Model ASA clause, already incorporated in many bilateral arrangements, should be sufficient to meet most States' concerns. This clause grants the right to either party:

“to suspend or vary the operating authorization of an airline or airlines of the other party immediately in the event the first Party concludes, whether as a result of a ramp inspection, a series of ramp inspections, a denial of access for ramp inspection, consultation or otherwise, that immediate action is essential to the safety of an airline operation.”

- c) The third part of IATA's proposal is liberalization of *national* limitations on airline ownership. The effectiveness of the measures proposed will be substantially reduced if this is not done. Again, however, this is put forward as an option for States to implement.

## 5. CONCLUSION

5.1 There is an urgent need to grant airlines the freedom enjoyed by other industries.

5.2 While it is recognized that some States may not wish to take this step, those that are willing to do so should be encouraged to make further progress to open markets.

5.3 The liberalization of bilateral ownership and control rules and the removal of national restrictions would do more to create a truly global aviation industry than any other measure. For an industry about to celebrate its centenary, such reform is long overdue.

### Four Practical Steps

- Distinguish between *commercial control* conferred by ownership and *regulatory control* exercised by the licensing authorities.
- Remove restrictions on *ownership*.
- Make *regulatory control* the responsibility of the State(s) of designation.
- Provide control of *safety and security* through adoption and implementation of the relevant ICAO/ECAC Model Clauses.

## 6. ACTION BY THE CONFERENCE

6.1 The Conference is invited to take into consideration the airline industry position in developing its recommendation liberalizing ownership and control.

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