

**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

**AN OPEN AND CONSULTATIVE APPROACH TO LIBERALIZING
AIR CARRIER OWNERSHIP AND CONTROL**

(Presented by Singapore)

SUMMARY

Singapore recognizes the changing external environment and is supportive of the recommendations by ICAO and International Air Transport Association (IATA) to broaden the liberalization of the airline designation criteria. In particular, this paper discusses the need for an open and consultative approach by Contracting Parties, with the view to understanding and identifying solutions to their unique concerns. Such an approach will pave the way for Parties to find common middle ground for adapting existing frameworks for liberalisation without compromising their interests. Presented for the Conference's consideration.

Action by the Conference is in paragraph 4.1.

1. INTRODUCTION

1.1 Traditionally, national airlines have been closely tied to their respective governments for a variety of reasons including but not limited to: safety and security regulation, prevention of flags of convenience or "third party free-riding" and anti-competitive behaviour, national defence, as well as retention of foreign exchange earnings and jobs in the country. These factors have been commonly cited as reasons for the retention of the requirement in most bilateral Air Service Agreements (ASAs) for an airline to be substantially owned and effectively controlled by the nationals of designating party.

1.2 Over the past two decades however, there has been a trend towards airline privatization. This was partly in line with the wider trend of globalization, liberalization and privatization. Regional economic unification has also to some extent blurred the boundaries of airline ownership and control. On the commercial front, airlines are increasingly seeking new partners and alliances (often taking equity stakes in one another) to spread risks and pool together complementary skills and resources. Foreign capital injections are also important to cover the immense capital requirements of this industry.

1.3 Singapore recognizes the changing external environment and is supportive of the recommendations by ICAO and IATA in their respective working papers calling for the broadening of the liberalization of the airline designation criteria. In fact, with the drastic impact of the 11 September 2001 incident and related developments, we believe that it is all the more critical for airlines to have the commercial flexibility to plan with certainty and move with agility. States should hence consider proactively removing commercial obstacles under the ASAs, including the requirement for airlines to be substantially owned by its designating country, its nationals, or both.

2. **SEEKING COMMON GROUND IN LIBERALIZATION**

2.1 ICAO has recommended draft model clauses for Contracting States' use at their discretion. With the recent ruling by the European Court of Justice on its members' bilateral ASAs, an alternative model will probably be developed eventually for European countries' use in their negotiations. Such frameworks will be useful as a basis for discussion among Contracting Parties.

2.2 Nonetheless, given the different concerns and circumstances unique to each party, an open and consultative approach will be important for both sides to share their mutual concerns with the view to finding a suitable pace and format to liberalize airline ownership and control. It is through such an approach that Singapore has managed to liberalize the airline designation provisions for more than 20% of our ASAs to date.

2.3 In line with ICAO's recommendation endorsed at the 1994 World-wide Air Transport Conference, Singapore had initiated a move away from the "substantial ownership" criterion, by proposing to amend the airline designation clause in a number of our ASAs to one based on "principal place of business" and "effective control". Noticeably, progress was made with several partners who were prepared to discuss and "customise" our approach to liberalizing the designation criteria.

2.4 Under the Singapore-United Arab Emirates(UAE) ASA, for instance, the designation criteria were amended to allow Gulf Air's operations under the ASA so long as its incorporation and principal place of business remained in Oman, the UAE, Qatar, or Bahrain and effective control remained in the hands of the governments of the said States and/or their nationals. Under the Multilateral Agreement on the Liberalization of International Air Transportation, the "substantial ownership" criterion was removed, albeit a party reserved the right to reject the designation of an airline by another Party, if it determined that substantial ownership of the airline was being held by nationals of the party receiving the designation.

2.5 The above would not have been possible if (a) the "more liberal" party adopted an "all-or-nothing" approach or (b) if the "less liberal" party had rejected the liberalization proposal from the onset. On a similar note, when considering new proposals on airline designation provisions, such as those likely

to arise from the European Court of Justice (ECJ) ruling, Contracting States should attempt to openly share their views and concerns, if any, with the view to making at least some mutually acceptable progress. For example, Singapore would be prepared to incorporate an “European Union (EU) community clause” in our bilateral ASAs with European countries for all EU carriers to utilize the rights under the said ASAs, so long as third-party free riding can be prevented.

3. CONCLUSION

3.1 In summary, Singapore is supportive of moves to liberalize the designation criteria under the ASAs to provide for maximum commercial flexibility for airlines and as part of the larger goal toward air services liberalization. It is our view that, in applying the existing frameworks, Contracting Parties should make a conscious effort to adopt an open and consultative approach, with the view to liberalizing airline ownership and control while best addressing their unique concerns. Any move toward liberalizing air carrier ownership and control, even if partially so, should be welcome as a first step toward the removal of constraints under the ASAs.

4. ACTION BY THE CONFERENCE

4.1 The Conference is invited to take these views and recommendations into account in its consideration of this item.

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