

## **WORLDWIDE AIR TRANSPORT CONFERENCE: CHALLENGES AND OPPORTUNITIES OF LIBERALIZATION**

**Montreal, 24 to 29 March 2003**

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### **VIEWS OF PAKISTAN ON CONFERENCE AGENDA ITEMS**

(Presented by Pakistan)

#### **SUMMARY**

This paper presents the views of Pakistan on the Conference agenda items. Action by the Conference is in paragraph 10.1.

## **1. INTRODUCTION**

1.1 A Worldwide Air Transport Conference on international Air Transport Regulation was convened in November/December 1994 with the objective to evaluate basic goals of States for arriving at a new regulatory arrangement/arrangements, which may be termed as a multilateral arrangement of conducting airlines operations, in which a number of issues such as market access, air carrier ownership, safeguards (including dispute resolution mechanism), structural impediments (Subsidies and States aids, restraints on access), broader regulatory environment doing business matters (ground handling) future regulatory process/Structure (agreements between a State and group of States or between two groups of States) and the ongoing quest for multilateralism in the global regulations of conducting commercial air transport services came under review. 137 Contracting States of ICAO and 28 Observer Delegations participated in the Conference. It was observed that countries, that may be termed as third world countries or those falling in the category of under-developed countries were of the view that States, by and large not being at the same level of development with diverse and unequal opportunities available at their disposal, would not support the multilateral concept of conducting airline operations. This view was also supported by Pakistan, a stance that

we intend holding on to even today and also forms the basis of a draft on the Declaration of global principles for international air transport. This forms Item 4.2 on the agenda of the Conference amongst other issues that would come under discussion and are briefly detailed as follows.

## 2. AIR CARRIER OWNERSHIP AND CONTROL - AGENDA ITEM 2.1

2.1 The proposed criteria in this regard envisages that each party to an air transport agreement could expect that any carrier it designates would be allowed to use the market access granted to it by a second party, and that second party would so commit itself, provided that the air carrier:

- a) is and remains substantially owned and effectively controlled by nationals of any one or more States that are parties to an agreement or by any one or more of the parties themselves; or
- b) has its Headquarters, central administration or principal place of business in the territory of the designating party, regardless of its ownership and control.

2.2 **Our view is that the national ownership and control criteria could be applied more flexibly in the existing bilateral framework; e.g. States considering it on a case to case basis.** However, if some change is considered necessary in the traditional national ownership and control criteria so as to broaden sources of investment in airlines, to take into account regional arrangements on market access and to adapt to current industry situation, it should be ensured to avoid excessive change so as to maintain responsibilities and obligations of an air carrier to the State which designates it, and to ensure guarantees against “flags of convenience”, with due consideration for safety, environmental issues, labour and user interests.

2.3 Further, as per the proposed regulatory arrangement on foreign investment in national air carriers and the right of establishment, the parties are envisaged to work towards:

- a) removal or lessening of any existing impediments to inward (foreign) investment in their air carrier(s), including investment by foreign air carriers; and
- b) creating a right of establishment of air carriers in their territories by foreign nationals.

Both a) and b) would be conditioned by reciprocity and the need to maintain competition.

2.4 **Permitting right of establishment of an air carrier in the territory of Pakistan by foreign nationals would be against the commercial interests of Pakistani airlines as well as against the national exchequer and therefore, is not acceptable to Pakistan.**

## 3. MARKET ACCESS - AGENDA ITEM 2.2

3.1 The proposed three-part regulatory arrangement on Market Access (Para 2.2.3 of *Report on the World-wide Air Transport Conference on International Air Transport Regulation: Present and Future* (Doc 9644)) includes “progressive introduction” and a “safety net”, and when taken in conjunction with proposed arrangements on safeguards, ownership and control, foreign investment and the right of establishment, was designed to provide an integrated and interrelated package of provisions that would enable States to move towards a more open competitive transport sector.

3.2 The basic principles proposed for **Market Access** were that each party would grant unrestricted basic market access rights to each other party for use by the designated air carrier(s) of such other party:

- a) for services touching the territories of both parties (without cabotage rights);
- b) optionally, for so called 7th Freedom services (i.e., services touching the territory of the granting party but not that of the designating party; and/or
- c) optionally with cabotage rights.

3.3 However, the general agreement during the Conference was that unrestricted basic market access as above was not presently feasible at the world level and that no single regulatory arrangement for market access would be able to meet the needs of all States for the foreseeable future. The Conference concluded that there is no global commitment to full market access at this stage of air transport development and States which choose to use the full market access arrangements would do so in full recognition of the risks, opportunities and potential benefits. With respect to the progressive liberalization of market access each State would ultimately make its own rational choice as to the degree and pace of liberalization, on a case-by-case basis and in the light of its particular circumstances. **In this scenario of general reluctance on the part of States about the efficacy of the proposed Market Access, Pakistan would continue to follow the path of Bilateralism, without eliminating the concept of reciprocity.** Considering the very nature of international markets in the developed World that Pakistan touches, and having given similar facilities to Carriers operating from the developed countries, it would have to be seen whether Pakistan is granted market access, even on a bilateral basis, without cabotage rights and 7th Freedom rights. On the part of Pakistan, it would have to be a phased liberalization. Without positive indications from the developed countries for granting market access to Pakistan, Pakistan is not in a position to make a commitment.

3.4 In case of the United States, United Kingdom and Scandinavian countries, a significant level of Market Access has already been achieved. On the other hand, Germany and the Netherlands have put a restriction on Pakistani International Airline's (PIA's) number of frequencies if PIA opts to exercise 5th Freedom rights for points beyond; such restriction hitherto was not there prior to recent review of Bilaterals with these countries.

3.5 The second part of the above referred Market Access has been defined as "Safety Net" as per which each party would have the right to impose a capacity freeze as an extraordinary measure.

3.6 The proposed arrangement based solely on temporary capacity freeze could hardly achieve the purpose as a safeguard to a rapid and significant decline in a party's participation in a country pair market as a result of free market access. Its use and timing is uncertain because of unilateral invocation, it might not be timely to save an airline whose existence was required for participation. It does not address non-capacity related threats to participation and needs to be applied on city-pair basis rather than a country-pair level. **In this regard, we concur with the Conference's recommendation on the need to have appropriate preventive measures as an integral part of "Safety Net" for a sound implementation of any future regulatory framework.**

3.7 The report on the fourth air transport conference (Doc 9644), para 2.2.3.3 recommends that market access be progressively implemented. A step recommended is to conclude an agreement or agreements that liberalize blocks of market access, such as all cargo-market or the non-scheduled market, prior to even considering liberalizing scheduled passenger operations.

3.8 One of the key issues in Market Access is the slot problem. If a liberal Bilateral arrangement provides for a number of frequencies as an entitlement of a designated airline, the access to an airport is circumvented by non-availability of suitable slots particularly at European, United Kingdom and Canadian airports. **There is a need to develop a mechanism whereby the airlines from developing countries, which**

**because of fleet limitations have to operate flights at a certain time/day, should be helped by the developed countries to acquire suitable slots of their choice, so as to be able to provide airlinks necessary between a developing State and a developed country.**

#### **4. CONSUMER INTERESTS - AGENDA ITEM 2.4**

4.1 It is understood that consumers are protected and covered for under legislation applicable in the United States, European Union, Latin American Civil Aviation Commission and International Air Transport Association (IATA). It is also understood that ICAO has developed guidance material for condition of carriage, which be extended globally for use as required by States for their airlines and service provider.

#### **5. PRODUCT DISTRIBUTION - AGENDA ITEM 2.5**

5.1 Computer Reservation Systems (CRS) provide substantial benefits to CRS system vendors, participating carriers and subscribers, in other words to both air transport industry and air transport users; however, care must be taken to avoid abuse of the system. The CRS code should be such that it is fully transparent, and system vendors, air carriers and subscribers should comply with the code.

5.2 **All carriers which have chosen to participate in the CRS should be treated in a non-discriminatory manner. Any CRS services, which are offered to one participating carrier, should be offered to all of them.**

5.3 Due to ownership or control of many CRS by several air carriers, there will always be an advantage for these carriers. **In such circumstances, a carrier with ownership interest in a system should not receive any preferential treatment regarding CRS services and should minimize the differential treatment such as time taken to load its own data into the system, as compared to other participating carriers.**

5.4 Furthermore, carriers from developing countries should receive fair and equal treatment in CRS in foreign markets and also there should be an adequate and appropriate product distribution system.

5.5 We also suggest the following points for the CRS code of conduct to promote desirable practices and avoid detrimental ones:

##### **Air Carriers shall:**

- a) be responsible for the accuracy of information provided to system vendors for inclusion in CRS; and
- b) enable system vendors to identify scheduled en-route changes of equipment, use of the designator code of one carrier by another carrier, the number of scheduled en-route stops, and any surface sectors or changes of airport required.

##### **Subscribers shall:**

- a) be responsible for the accuracy of any information they enter into the CRS; and
- b) not manipulate information supplied by a CRS in a manner that would result in inaccurate or misleading information being given to any air transport user.

##### **System vendors shall:**

- a) permit participation in its CRS by any carrier prepared to pay the requisite fee;
- b) ensure that any fees it charges are non-discriminatory, and are not structured in such a way that small carriers are unfairly precluded from participation;
- c) not impose any conditions on participation in its CRS that are not directly related to the process of distributing a carrier's air transport products; such as required purchase or sale of any other goods or services;
- d) ensure that no carrier obtains an unfair advantage through misrepresentation of services;
- e) not discriminate among participating carriers in making available any information generated by its CRS;
- f) if information provided directly or indirectly by any carrier appears to be inaccurate, same should be clarified with the carrier concerned;
- g) load information provided by participating carriers with consistent and non-discriminatory standards;
- h) not manipulate the information provided by carriers in any way that would lead to inaccurate information being given to subscribers;
- i) base the selection and construction of connecting services, and the ordering of services in a neutral display of schedule and or/space availability information on objective criteria (such as departure/arrival times, routing, number of stops, number of connections, etc.);
- j) ensure that any special data loading capability provided to one participating carrier should be offered to all participating carriers;
- k) not attach anti-competitive conditions to contracts with participating carriers such as excessively long contract duration and excessive penalties for withdrawal from contracts; and
- l) not discriminate among subscribers in the CRS services it offers.

5.6 The above will enhance fair competition among airlines and among vendors of CRSs.

## 6. **DISPUTE RESOLUTION - AGENDA ITEM 2.6**

6.1 The dispute resolution mechanism is a mechanism of consultation/resolution between parties to evaluate whether certain commercial activities of airlines constitute a practice prescribed by the code of conduct. However, the dispute resolution mechanism requires further development including specific provision on its procedures, operation, scope and the implementation of its decisions backed up by more institutionalized arrangements. e.g. the implementation of the mechanism for resolution would occur through impartial air transport experts, selected from a pre-determined roster maintained by an independent body. A more fool-proof mechanism needs to be defined specifically from the stand-point of developing States, which may find a decision of a panel prejudiced if all the panel experts happen to be from developed States; therefore, specific criteria needs to be laid down in the selection of panel of experts.

## 7. **TRANSPARENCY AND REGISTRATION OF AIR SERVICES AGREEMENT - AGENDA ITEM 2.7**

All Air Services Agreements concluded by States are filed with ICAO in accordance with Article 81 and 83 of the Chicago Convention. However, the Memoranda of Understanding (MOUs) to such agreements are not filed with ICAO. From the above captioned agenda item it appears that ICAO is working on inclusion of such MOUs also for the purpose of filing with ICAO. However, from our experience of the rigidity shown by some of the developed countries, which accrue benefit from confidential nature of MOUs, we hardly expect any positive development on this agenda item. Therefore, during the Conference, Pakistan would await the response of developed and de-regulated countries before committing itself to registration of its MOUs with ICAO.

**8. REVIEW OF TEMPLATE AIR SERVICES AGREEMENT - AGENDA ITEM 3**

8.1 ICAO is developing conference material on template air services agreement for optional use by States wishing to liberalize. *Policy and Guidance Material on the Economic Regulation of International Air Transport* (Doc 9587), has been cited as a basis for such a template Air Services Agreement. A text of such a template air services agreement would be available during the ICAO conference to be held in 2003. The conference would not be expecting endorsement of the text but would rather undertake a review of the concept. Subsequently Civil Aviation Authority Pakistan and PIA, the national carrier of Pakistan would then be in a position to comment on the Template Air Services Agreement.

**9. MECHANISMS TO FACILITATE FURTHER LIBERALIZATION - AGENDA ITEM 4.1**

9.1 Our stance in the 1994 air transport conference was that due to diverse and disproportionate opportunities, it would not be possible for us to support the multilateral concept of conducting airline operations. This stand of ours was also supported by the third world/underdeveloped countries. This is the position that we intend adopting in the air transport conference 2003 and is also the basis on which we have formatted our draft on the Declaration of Global Principles for International Air Transport for submission to ICAO. Bilateral and multilateral framework is to coexist with States that are underdeveloped to gradually phase into multilateral framework.

**10. ACTION BY THE CONFERENCE**

10.1 The Conference is invited to take the views in this paper into account in its consideration of the various Conference agenda items.

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