

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

Montreal, 24 to 29 March 2003

Agenda Item 1: Preview

1.2: Safety and security aspects of liberalization

SAFETY ASPECTS OF LIBERALIZATION

(Presented by Albania Armenia, **Austria**, Azerbaijan, **Belgium**, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, **Denmark**, Estonia, **Finland**, **France**, **Germany**, **Greece**, Hungary, Iceland, **Ireland**, **Italy**, Latvia, Lithuania, **Luxembourg**, Malta, Moldova, Monaco, **Netherlands**, Norway, Poland, **Portugal**, Romania, Serbia and Montenegro, Slovakia, Slovenia, **Spain**, **Sweden**, Switzerland. The former Yugoslav Republic of Macedonia, Turkey, Ukraine, **United Kingdom**)²

INFORMATION PAPER

SUMMARY

This paper sets down for information and consideration of the Conference some key issues requiring to be addressed when discussing safety aspects of liberalization with particular regard to the relationship between ownership and control of airlines and safety. It should be read in conjunction with the European (European Civil Aviation Conference (ECAC) and European Union (EU)) Working Paper on liberalizing air carrier ownership and control.

¹ French version provided by European Civil Aviation Conference (ECAC)

² The 15 Member States of the European Union (EU) appear in bold.

1. THE RELATIONSHIP BETWEEN OWNERSHIP AND CONTROL AND SAFETY OVERSIGHT ...

1.1 Consumers of air services would be expected to benefit from liberalization through lower prices and a greater range and diversity of services. But dismantling ownership and control restrictions would mean the reduction or disappearance of the linkage between an airline and the single nation state on which the bilateral system is based. For over fifty years the regulatory control of air carriers within a nation state has been a key plank in the global air safety system. An important challenge which proponents of change must address is how to capture the benefits of wider liberalization without compromising the safe operation of aircraft.

1.2 The Chicago Convention requires that an operator should have only one air operator certificate (AOC) issued by the State in which the operator's principal place of business is located. This requirement ensures that a single set of safety regulations is applied, and encourages the formulation and operation of a coherent safety management system. Safety oversight of that AOC by one State ensures clear lines of responsibility and accountability, giving other States the necessary assurance that they can call a specific State to account if they have concerns over the safe operation of a foreign airline.

1.3 Inside the European Community, where bilateral agreements between Member States have been abolished, aviation law still reflects international norms. Thus Council Regulation 2407/92 requires that the granting and validity of an operating licence shall be dependent on the possession of a valid AOC complying with the relevant Council Regulation or, until such time as one is applicable, national regulations. Since all EU States are signatories to the Chicago Convention such national regulations should meet ICAO standards.

1.4 Additionally, Regulation 2407/92 requires that no undertaking shall be granted an operating licence by a Member State unless its principal place of business and, if any, its registered office, are located in that Member State. This provides scope for a Member State to question the granting of an operating licence and AOC by another Member State where the operator concerned seems to want to operate predominantly from inside the first Member State and about which the first Member State has serious safety concerns.

1.5 Thus the traditional ownership and control 'link' between airlines and individual States both mirrors and reinforces the international safety regulation system. That system relies on mutual interdependence, whereby all States sign the Chicago Convention and undertake to comply with the annexes to that Convention establishing minimum standards for the safe operation of aircraft. Signatory States are required to accept certificates issued by other Signatories and allow their aircraft and operators access to their airspace and airports on the basis that those minimum standards have been equalled or exceeded. If standards are not met, States can refuse access.

1.6 This system has ensured that "flags of convenience" have not developed to any marked extent in the aviation sector, in contrast to maritime experience. However, full liberalization of commercial arrangements would not sit so comfortably with nationally based safety regulation, and the question arises of whether safety oversight may be compromised or weakened by economic liberalization.

2. EXISTING SAFEGUARDS

2.1 One weakness of the Chicago system has been that, until the mid-1990s, ICAO did not police the application of its standards by particular States. Instead, individual States have to a greater or lesser extent used bilateral Air Services Agreements (ASAs) as a policing tool, for example by requiring non-Community airlines wishing to enjoy traffic rights to apply for permits, for which they are required to prove that they have a valid AOC. Some countries, particularly the United States, go further and require foreign airlines to obtain specific approval that their AOCs meet ICAO minimum standards (by way of the grant of so-called “foreign air operator certificates”). ASAs may also include safety clauses, providing for structured discussions, reciprocal safety checks and other safety-related actions. Following the development on an ECAC model safety clause, an ICAO Council resolution in June 2001 recommended a model safety clause for inclusion in all ASAs.

2.2 The Safety Assessment of Foreign Aircraft (SAFA) programme provides a further safeguard by establishing systematic ramp checks for identifying non-compliance with ICAO standards, for sharing information and for taking co-ordinated action where particular airlines or countries give rise to concerns.

2.3 The ICAO system has been strengthened in recent years by the development of an ICAO auditing programme, originally on a voluntary basis, but since 1999 effectively mandatory. The audit programme establishes whether States meet the requirement of relevant parts of the Chicago Convention and specific annexes, and requires action plans to be drawn up where there are deficiencies. Summaries of the audit findings and action plans are available to all other ICAO members. Audits have now been completed for all but a handful of States; the vast majority of States have been required to produce action plans. Although the audits do not assess the safety of individual operators, the programme has raised the level of compliance with ICAO minimum standards and given all States sound, objective evidence to help them assess whether AOCs have been correctly issued to foreign operators and adequately monitored by the regulator.

3. BILATERAL LIBERALIZATION

3.1 These improvements notwithstanding, liberalization of market access and/or ownership and control rules will lead to more airlines having operations or places of business in a number of different States, or operating mainly outside the State in which their registered offices and/or owners are located. This suggests that the ICAO system of single State oversight to ensure continued safe operation may be faced with increasing practical challenges .

3.2 Where a bilateral system continues to operate, the inclusion of effective safety clauses in an open skies agreement is an initial, relatively straightforward safeguard. Where the agreement covers airlines with distant operational “outposts” further arrangements may have to be agreed, ensuring both the satisfactory inspection of aircraft and maintenance facilities and the oversight of operational and personnel issues (e.g. the application of a coherent safety management system). For example, were an ECAC State and New Zealand to agree full and genuine liberalization, with the potential for New Zealand airlines to operate services within the ECAC State, arrangements might incorporate one or more of the following possibilities:

- a) the relevant aircraft regularly return to New Zealand, allowing for effective inspection by the home authority;

- b) New Zealand safety regulators establish an outpost office in the ECAC State, and/or send inspectors on a regular basis;
- c) New Zealand “contracts out” safety inspection of relevant operations to the ECAC State regulatory authorities;
- d) New Zealand “contracts out” safety inspections to a third country or commercial body acceptable to the ECAC State.

None of these arrangements would remove responsibility or accountability for safety regulation and oversight from New Zealand; nor would they necessarily require a relaxation of ownership and control rules. There is however another possible arrangement, which would require a relaxation of existing ownership and control rules (though it would place a new constraint on the normalisation of the industry):

- e) Air New Zealand could be required to establish a subsidiary in the ECAC State, ‘Air New Zealand (x) Limited’, with its principal place of business in the ECAC State and operating as a discrete airline subject to the ECAC State’s safety regulation.

4. REGIONAL LIBERALIZATION

4.1 Within the Community, where liberalization has taken place on a regional basis, the relative geographical compactness of the single market has so far permitted continued reliance on single State oversight. For example, although Ryanair (an Irish registered airline) operates a substantial proportion of its services within or out of the United Kingdom, the Irish authorities maintain effective safety oversight by a combination of (a) and (b) above.

4.2 However, the more distant operations become from their “home State”, the more difficult it becomes to maintain this oversight. In the future, the European Aviation Safety Agency (EASA) should provide the means of harmonizing and enforcing safety standards across Europe which are acceptable to all participating countries, but the proposals for EASA do not yet set out either the essential safety requirements or the details for regulating operators, and there are currently no moves to replace national AOCs with European-wide AOCs.

4.3 New issues would arise should the European Union and the United States form a trans-Atlantic Common Aviation Area. There would need to be an effective mechanism for addressing safety issues, permitting prompt remedial action where necessary. Given the resources of the two parties, the commonality of equipment and safety traditions, and the extensive work on harmonization which the respective safety authorities have already carried out, this should not pose insuperable problems. In the future EASA would be the focal point for European participation in such a mechanism. It is not known yet which of the arrangements outlined in paragraph 4.1 would be permitted, but the United States might well prefer the establishment of subsidiary airlines subject to their regulatory oversight.

5. GLOBAL LIBERALIZATION

5.1 As we move towards a normalized global aviation industry, a more wide-ranging solution may be required. One possible solution would be some kind of international or regional AOC, but this supposes an international or regional safety regulatory body with sufficient powers and accountability to provide equivalent levels of safety oversight to that provided by individual States. Even EASA, as predicated in the current proposal, does not affect EU Member States' obligations under the Chicago Convention - Member States will delegate certain functions to EASA but will retain their formal responsibilities in ICAO. It is highly unlikely that ICAO would want or be able to take on such a role, and there would be difficult issues of accountability. Even if such changes were desirable, they would require major changes to the Chicago Convention which would take years to achieve. In the foreseeable future ultimate responsibility for safety oversight will continue to lie with nation States.

5.2 An alternative approach might lie in strengthening the principal place of business linkage between an airline and the State issuing its AOC. There are, however, a number of difficulties with this. For one thing, the term principal place of business has no definition in either ICAO or EU law. As a result, the principal place of business of an operator can be difficult to pin down where an airline operates in a number of different States. There have also been problems of agreeing on interpretation when airlines operate mainly outside the State in which their registered offices and owners are located. It is important to ensure that, in a liberalized global environment, all commercial air carriers are properly supervised by accountable regulatory authorities.

5.3 The more the operators in a liberalized market all work to a similar set of safety regulations and are seen to abide by them, the greater the public confidence in the safety of that market. Safety regulations are increasingly being harmonized both within Europe and between Europe and the United States, and European and American standards are more and more forming the basis of national regulations world-wide. EASA will provide a means to implement higher standards within Europe, and the ICAO audit programme should increasingly ensure implementation of at least minimum international standards elsewhere.

— END —