

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 2.3: Fair competition and safeguards

FAIR COMPETITION AND SAFEGUARDS

(Presented by Bahrain, Egypt, Iraq, Jordan, Lebanon, Libyan Arab Jamahiriya, Morocco, Oman, Qatar, Saudi Arabia, Sudan, Syria, Tunisia, United Arab Emirates, Yemen and the Observer from Palestine)²

SUMMARY

This paper deals with the optimum method to implement rules of fair competition and safeguards in a liberalized and competitive international air transport environment.

Action by the Conference is in paragraph 5.1.

1. INTRODUCTION

1.1 With the liberalization of air transport, there is a progressive expansion of certain traditional concepts related to fair competition and equal opportunities for air carriers and the air transport market. To have fair competition, particularly in cases where the States have accepted the principle of free competition, certain rules of conduct have to be applied. The role of governments in this case will be restricted to facilitation and regulation rather than actively participating in the development of international air transport.

1.2 Under the emerging regime, market forces have provided the necessary link between service providers and consumers. Autonomous organizations responsible for regulation and safeguarding competition have played the fundamental role of supervising market forces, trying to guarantee the sustainability of such a regime on the long term. With time, and as it was the case in other sectors of the economy, the liberalization

¹ Arabic version provided by Members of the Arab Civil Aviation Commission (ACAC).

² Members of the Arab Civil Aviation Commission (ACAC).

process has developed along with competition rules and policies to build an integrated and interdependent relationship. The States that have opted for the liberalization of the air transport market have agreed to ease restrictions on market access in their bilateral agreements. Thus, there is a need to mutually agree on a common set of measures and a general description of what is considered fair and/or unfair competition. This is considered necessary to provide for the gradual and progressive approach to guarantee participation, adaptability and fair competition.

1.3 The successful transition to a liberalized international air transport system depends on the development of acceptable mechanisms that would safeguard the participation of all countries, particularly developing ones, in an effective and sustainable manner. While it is expected that there would be variations in the level and nature of participation of the various carriers, the guarantee of service, particularly in smaller markets, is a very important issue in this context.

2. POTENTIAL WAYS OF IMPLEMENTING COMPETITION RULES AND SAFEGUARDS IN A LIBERALIZED ENVIRONMENT

2.1 Due to the different extents of liberalization between States and the development and implementation of competition rules, there are three different scenarios to deal with the current situation:

- a) The scenario where the two parties in a bilateral agreement (or all parties in a multilateral one) operate in a liberalized air transport regime with its own competition rules and policies, where there may or may not exist a separate bilateral cooperation agreement regarding competition issues;
- b) the scenario where parties agree under a bilateral or multilateral agreement to make the transition to a liberalized environment, even if it does not entail a full “Open Skies” agreement for their designated carriers. However, there would be a need for an institutional arrangement to safeguard competition and effective participation for their designated carriers regardless of their size and competitiveness; and
- c) the scenario where the parties in a bilateral agreement are not prepared for the liberalization of market access, but where both parties support liberalization as a desirable goal for the long term and wish to follow a progressive approach to provide for equal participation, adaptability and fair competition.

3. ANALYSIS AND CONCLUSION

3.1 Countries of the first scenario will generally follow policies aimed at strengthening the mutual relationship between the liberalization of international air transport and the implementation of competition rules through their bilateral (or multilateral) agreements covering the procedural and substantive aspects of competition. They will thus attempt to fulfill their needs by relying less on a separate group of guidelines in that field on a case by case approach.

3.2 As for the countries in the other two scenarios mentioned above, the relationship between the liberalization of air transport and the implementation of competition rules was probably in its early phases. It will require from countries which are in a transitional phase towards a fully liberalized environment to follow specific institutional arrangements such as safeguard mechanisms and/or agreements to implement

competition rules. They will also need another important tool, which is an effective mechanism for dispute settlement.

4. COMPETITION RULES AND THE ARAB CIVIL AVIATION COMMISSION (ACAC)

4.1 Arab countries are increasingly expressing their interest in competition rules with the globalization of the economy and the impact of General Agreement on Trade in Services (GATS) on the international, regional and national levels, as it has become clear that a free market economy is an inevitable reality. As competition rules aim primarily at a proper and balanced operation of market mechanisms, the development of competition rules on the Arab level can be viewed as one of the economic priorities in the implementation of a wider Arab Free Trade Area or in launching the freedoms of the air among Arab countries.

4.2 A Study by the Arab League on competition legislation and policies in Arab countries has shown that there is a need for a clear and defined policy on competition to support the commercial sector and provide necessary guarantees in facing the challenges of the future.

4.3 It is worth mentioning that there is also a trend to develop competition rules and policies on the Arab level. This has begun to materialize, as Morocco and Tunisia have promulgated a competition law while a number of other Arab States have modified their commercial laws to include texts along those lines. Egypt and Lebanon are also finalizing a national law on competition.

4.4 Efforts were also made by the Arab League which developed a model text on competition and anti-trust rules. This text was recently approved by the Economic and Social Council of the Arab League (11-12/9/2002) to be used as a model text for States in the development of their competition rules.

4.5 The Arab Civil Aviation Commission (ACAC) has recognized that for the liberalization of air transport to proceed at the desired level in the current international economic environment, it is of paramount importance to have a system that guarantees fair competition in the market, and to provide guarantees for the protection against abuse. Consequently, the efforts of ACAC were focused on the development of an air transport liberalization programme among Arab countries and the mechanism to implement it. This mechanism was endorsed by the 14th Arab Summit held in Beirut. This programme also includes the basic principle of fair competition in addition to the rules and measures that would provide protection against any abuse.

4.6 It is important that the mechanism to launch the freedoms of the air in the Arab countries provides for fair competition and non-discrimination between carriers and there is a need for a code of conduct and a dispute settlement mechanism. In addition, ACAC was also keen to include in the draft air transport liberalization agreement (which is currently under preparation by ACAC to be available for multilateral agreements between Arab States during the last phase of the programme) many competition-related rules whether for the granting of traffic rights, capacity, tariffs or designation of carriers and dispute settlement, as well as several other rules aimed at safeguarding the implementation of this principle.

5. **ACTION BY THE CONFERENCE**

5.1 The Conference is invited to:

- a) request the International Civil Aviation Organization to update the code of conduct and safeguards related to fair competition so as to allow the participation of air carriers in the international air transport market and include such provisions in the Template Air Services Agreement;
- b) take into consideration the inclusion of preferential measures in the Annex to the Template Air Services Agreement, to guarantee the active and sustainable participation of developing countries in the international air transport market; and
- c) develop a dispute settlement mechanism to be incorporated in bilateral agreements to cover all kinds of disputes that may arise under such agreements, including disputes resulting from unfair competitive practices.

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