

**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**
- 2.2: Market access**
- 2.3: Fair competition and safeguards**
- 2.5: Product distribution**
- 2.6: Dispute resolution**

REVIEW OF KEY POINTS OF LIBERALIZATION RULES

(Presented by Latin American Association of Air and Space Law)

INFORMATION PAPER

1. The Asociación Latino Americana de Derecho Aeronáutico y Espacial (ALADA), in its capacity as Observer at the Fifth Worldwide Air Transport Conference, is pleased to present its opinion on the points on the agenda, which is the result of the legal thinking of its members as expressed at its last meeting.

2. As on previous occasions where matters were discussed that are essential for the development of civil aviation worldwide and particularly in Latin America, focussing specifically on air transport, our Association has taken a position in respect of the needs and interests of the main players of the industry, taking into account principles of equity in the participation in the International Air Transport system.

3. In this connection, and with a view to this Fifth Worldwide Air Transport Conference directed at the entire air transport community, ALADA included in its agenda for its *XXVI Latin American Conference on Aertronautical and Space Law* held in Ushuaia, Argentina, on April 15-18, 2002 three important issues related to a major portion of the agenda of the worldwide air transport conference: “*Substantial ownership and effective control of airlines in Latin America*”, “*Bilateralism and liberalization in the future of International Commercial Air Transport*” and “*Dispute Resolution in International Air Transport*”. As a consequence of a broad discussion of these subjects, the following common conclusions were unanimously adopted:

¹ Spanish version provided by Latin American Association of Air and Space Law (ALADA)

- a) “Considering that ICAO is organizing the Worldwide Air Transport Conference for the first half of 2003 (March 24-29, 2003) to examine the ordered and secure development of the Air Transport system in the light of the liberalization process and of an economic arena affected by tax, social and labour pressures;
- b) Considering the convenience that ALADA contribute to the agenda with issues such as the notion of substantial ownership and effective control of airlines, alternative dispute resolution methods, relations with the World Trade Organization as to the review of the Air Transport Schedule of the GATTs -General Agreement on Trade and Tariffs-, safeguards, etc., without prejudice to other issues of global interest that may be incorporated;
- c) Acknowledging that both globalization and liberalization are irreversible events that air transport has to accept, preserving a rational share in the International Air Transport system for all States, regardless of the structure chosen for commercial negotiation;
- d) Confirm that the Convention on International Civil Aviation executed in Chicago in 1944 is the international regulatory framework for civil aviation, mainly with respect to technical issues and safety, and express that the Convention is the platform for the rational and ordered operation of air transport services, avoiding unfair competition and economic mismanagement.;
- e) Acknowledge that, in the light of current events, it is not possible, in the medium term, to implement radical changes to the instrumental notion of exchange of substantial rights of access to the air transport market, and that a transition period that incorporates regional structures of commercial negotiation should be implemented;
- f) Recommend taking into account that bilateralism, based on the national sovereignty principle, is the traffic rights exchange negotiation structure that is currently applied, but that it has undergone a substantial change due to market rules;
- g) Recognize that relaxing the traditional notion of substantial ownership and effective control of airlines to allow investments by foreign capital has to be subject to the legislative criteria of each country, and that the responsibility of the State where the airline operates has to be maintained in terms of operational issues and civil aviation;
- h) Recognize the need to study alternative dispute resolution mechanisms within Aeronautical Law, as they are essential for the regional integration of all countries; and
- i) Stress that, although it is true that ICAO has used its best efforts to provide counselling on many issues, such as the Code of Conduct on CRS (Computer Reservations Systems), Code-sharing and competition laws, it is necessary to go deeper in some issues that have

not been properly treated at the national level, and that they are a key defence in an arena open to competition. To that effect, it would be necessary to reach an international agreement for application of competition laws.”

4. As regards air transport problems in Latin America which depend on international events, the above-mentioned ALADA XXVI Conference approved conclusions with a view to the same objectives laid down by Latin American Civil Aviation Commission as well as in the Bávaro Declaration (Dominican Republic, November 2002) signed by the high dignitaries of Latin America. Such conclusions are the following:

“RECOMMEND:

- a) Adopting air transport policies aimed at a more relaxed administration of third and fourth freedom traffic rights and of the fifth intra-regional freedom, admitting their extra-regional extension if the same service operation conditions are applied;
- b) Accepting freedom in terms of capacity, including the right to change the “gauge” of the aircraft (larger aircraft for smaller ones) with the ability to operate hubs and spokes;
- c) Treating special doing business issues related to Computer Reservations Systems (CRS) as tools for the distribution of air transport, considering application of the so-called national treatment among the regional group under the General Agreement on Tariffs and Trade (GATT);
- d) The participation of the Government if there is an infringement to fair competition, and the application of the related rules to prevent and impose sanctions for any abusive position or predatory pricing. The concerns about adequate competition legislation have to be a priority to avoid legal uncertainty in the light of the new open competition scenarios;
- e) Finding innovative methods, both inter-company and inter-country, to assure the conditions required for a smooth and safe development of air transport, by implementing cross-information databases and recognizing licenses of equipment and crew;
- f) Modernizing national legislation to adapt it to the guidelines and principles of the International Civil Aviation Organization (ICAO). Most of the Aviation Codes or organic laws of the Region are more than 30 years old and provide no adequate mechanisms to solve the problems that have arisen recently;
- g) Downsizing costs, calling on the private sector that has been the transferee of the infrastructure and operation of air transport services and the Government to review the level and structure of rates and bring them to reasonably competitive levels.;

- h) Establishing independent “civil aviation authorities” with high qualifications and experience in civil aviation management to handle the current needs of International Air Transport;
- i) Creating new niches for the operation of aviation services (cargo, non-traditional tourist services, etc.), supplementing such niches with the regions to which Latin America has to integrate as the existing diversity fosters the exchange; and
- j) Studying the development of ADR (alternative dispute resolution) methods for Aviation law, vesting ALADA with the duty to perform the studies and execute cooperation agreements with the Institutes that train negotiators, as well as to obtain incorporation of aviation negotiation courses into their course of studies.”

5. The conclusions set forth above, agreed on by many industry specialists members of ALADA, constitute a set of suggestions directed at a rational progress in the liberalization of the air transport system and a kind of basic platform, open to the incorporation of other proposals to improve regional and international aviation which ALADA is pleased in presenting to this Worldwide Conference.

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