



***Aviation in Transition:
Challenges & Opportunities of Liberalization***

Session 4: Safeguards and Sustainability

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SAFEGUARDS AND SUSTAINABILITY

Background

About a decade ago the civil aviation community was grappling with the question of whether or not to liberalize international air transport.

Following the consensus reached during the 4th Worldwide Air Transport Conference, the industry has undergone progressive liberalization. States have become more open towards liberalization and many have reviewed and revised their national air transport policies and regulatory practices to effectively deal with liberalization challenges.

At the bilateral level, many of the recent air services agreements have incorporated liberal provisions while a significant number of states have concluded open skies agreements. At the regional level, economic groupings in various parts of the world have liberalized air transport services within their regions in accordance with the Yamoussoukro Decision. Examples in Africa include The Common Market for Eastern and Southern Africa (COMESA) and Southern Africa Development Community (SADC). Liberalization programme at the continental level based on the principles of the Yamoussoukro Decision of 1999 is in progress. However, its pace will depend on the speed of liberalisation within the regions.

It can be concluded that the process of liberalizing international air transport is progressing well and as expected has brought with it both opportunities and challenges. The next step is to enhance and consolidate these opportunities and ensure that they are properly exploited by and for the benefit of all peoples of the world. On the other hand, the complex challenges must be realistically addressed so that the process of liberalization is not derailed. The future regulatory

mechanism must therefore include effective safeguards that will guarantee sustained participation of all states in international air transport.

Due to its importance and impact on the lives of the people, non-aviation international agencies have picked interest in management of international air transport notable of these being the World Trade Organisation (WTO) with its General Agreement on Trade in Services (GATS). Their involvement will further complicate the challenges of liberalisation and therefore their concerns must be addressed in the continued process of liberalisation. There are plans to review the GATS Annex on Air Transport Services in order to extend its coverage beyond aircraft repair and maintenance, selling and marketing of air transport services and computer reservation system.

The convening of the 5th Worldwide Air Transport Conference is timely and should be used to explore the most effective ways of progressing the liberalisation of air transport at a pace and manner that will position ICAO, the legitimate agency, to remain in control of civil aviation. This is the only way of influencing and determining the direction of the industry and its ultimate status. ICAO must remain in charge and direct the process of liberalisation.

Need for the States to Participate in International Air Transport

As the debate on the liberalisation continues, we need to pose some questions. In answering these questions, the appropriate way forward for the liberalisation process will hopefully be found. These questions include the following:

- ◆ How can the desired/ expected outcomes of liberalisation be assured?
- ◆ How will sustainability be assured?
- ◆ Is it necessary to have safeguards or is competition that is brought about by liberalisation a sufficient safeguard?
- ◆ Can national carriers survive without safeguards in a liberalised environment?
- ◆ Does it matter if a state has no national airline?
- ◆ Can a state allow its national airline(s) to collapse and expect the foreign-owned airlines to provide the services needed?

- ◆ How can sustainability of carriers and assurance of services be achieved in a liberalised environment?
- ◆ How can fair competition and a level playing field be assured.

National against Foreign-owned Airline

The order of answering the questions does not really matter. One could start with analysing; whether it matters if a state has no national airlines.

The continued existence of national airline which is engaged in international services means continued participation of the state in international air transport. However is it important that the state participates in it and must it have a national airline to do so?

The importance of air transport is common knowledge to everybody and needs no appraisal in this discussion. Nevertheless it suffices to summarise its unique attributes as a way of underpinning the basis for the overwhelming interest of states to continue to participate in it.

Air transport is an alternative mode of transportation with unique advantages in:

- Promoting tourism industry
- Promoting the export of perishable products
- Providing speedy transportation of high value commodities (imports and exports)
- Providing reliable communication links especially in States with difficult terrain
- Providing national defense services
- Providing services in emergencies and relief situations such as earthquakes, flood, wars, etc
- Providing an alternative gateway for the land locked states
- Providing special community services such as spraying for agricultural and public health purposes
- Providing mapping services

Clearly air transport is a dependable vehicle for the economic, social and political development of a state. Therefore for several states the issue of a national carrier is of strategic importance and cannot be relegated to foreign carriers. On the same basis, those who think that it matters if a state has no national airline and that a national carrier should not be allowed to collapse in the hope that foreign carriers will provide the needed services have a justifiable argument. True, foreign-owned carriers can actually provide services but it is highly doubtful that they would be attracted to situations and areas where there is little or no commercial returns. Yet the need for air services quite often goes beyond the commercial boundaries to include emergencies, community services and other urgent national requirements. The future regulatory framework will have to take into account these national interests and guarantee sustained participation of the states in the international air transport.

Competition and Sustainability of National Airlines

Through the liberalization process, it is expected and desirable to enhance competition among air carriers. Healthy and fair competition brings about advantages such as good quality of service at reasonable prices and is therefore good for the industry and consumers. This factor can easily be demonstrated by the recent developments in aviation industry in my own country Uganda. The launching of two new carriers has led to reductions in air fares on a number of routes within the region.

However, competition creates rivalry among the airlines that respond by striving to squeeze others out of the market. Therefore unless it is well regulated, competition has the potential of causing severe distortions in the market to the detriment of the consumers. The carriers with scarce resources (a common phenomenon with carriers from the developing states) will slowly but surely disappear and leave the market to the few strong and dominant ones with obvious consequences.

Faced with the need to survive, the airlines do resort to cost cutting, restructuring or downsizing, code sharing, franchising, mergers, etc. Many of these innovations are of temporary nature and not necessarily assure the survival they are looking for. These measures need to be regulated because they have implications on the safety and security as well as the tendency to reduce the level of competition.

Therefore competition cannot in itself be a sufficient safeguard unless it is managed or regulated in a manner that enables sustained participation of all states in international air transport.

To guarantee such sustained participation, it is necessary to introduce other forms of safeguards that will ensure healthy and fair competition.

The safeguards must rationally and realistically address the disparities relating to the level of development, size and location of the states and their air carriers. Without these tailored safeguards, the national carriers especially from the developing states simply cannot survive in a liberalised environment

Foreign Investment in National Airlines

Having highlighted the justification for the states to have their own national airlines, it is important to identify the growing need for foreign investment in the national carriers and its advantages. It provides the much-needed capital financing, which is scarce in many states. However, foreign-ownership has implications on the designation and authorization of a carrier. In many of the bilateral air services agreements, there are provisions, which require that substantial ownership and effective control be vested in the government or nationals of the state designating the airline. In addition there will be justified safety and security concerns unless the issue of effective control of the airline is determined, clearly identifying the authority responsible for the airline.

Foreign ownership or investment in the national air carriers creates opportunities as well as regulatory challenges. There is therefore need for a regulatory mechanism that facilitates the progress of the liberalization process and fully addresses the various concerns relating to transnational airlines. The mechanism should enable airlines to take advantage of cross-border capital financing opportunities in such a way that the airline remains under the effective control of the designating state. Unless the foreign-ownership is properly handled it might result in flags of convenience that are likely to bring more problems than solutions.

Sustained Participation for All in International Air Transport

Equality of opportunity is one of the underlying principles in the regulation of international air transport and is indeed enshrined in the convention on International Civil Aviation. Each state has fair and equal opportunity to participate in international air transport. It is necessary to ensure that this principle is not only observed but also achieved irrespective of the extent of liberalization and the level of competition by guaranteeing sustained participation of all states.

However, serious disparities do exist among states that may undermine the ability of some states to fruitfully/meaningfully harness the opportunities in international air transport. In fact the mere leveling of playing field is not an adequate safeguard because of these disparities, which are skewed in favour of the developed states. These are real threats and require practical and realistic approach. The solution has to be provided by regulatory measures designed to create a healthy and fair competition in which the strong and less strong carriers can co-exist on sustainable basis. Against the foregoing, the following safeguards are suggested:

1. To avoid reduction of competition airline alliances should continue to be cautiously regulated. Any alliances that significantly reduce the right of the consumer to choose should be prohibited.
2. Market access should be open provided the capacity offered by each airline is matched with the market potential or size. This is necessary to prevent capacity dumping and predation. The appropriate regulatory mechanism should include factors such as load factors, which will trigger the increase or reduction of capacity in terms of frequencies and or aircraft gauge.
3. Similarly the pricing mechanism should remain flexible so that airlines are free to vary their prices within authorized margins. Price changes outside these margins should be approved before they are introduced in the market. This mechanism helps to prevent price dumping and predation and is also useful in markets where competition is non-existent or not yet developed.

These suggestions are not exhaustive. However, as the liberalization debate progresses, more issues pertinent to the sustained participation of all states will be identified with appropriate regulatory mechanisms.

Code of Conduct

An acceptable code of conduct should be developed to provide common understanding of what is acceptable and what is not acceptable. Such a code of conduct that is understood by all concerned will help minimize the disputes.

Dispute Resolution

There is need to agree on a dispute resolution mechanism to help settle the disputes between the Contracting States. Some form of arbitration will be necessary for the disputes that cannot be amicably resolved.

ICAO's Role

Tribute should be paid to ICAO for its role in ensuring the orderly development of international air transport. It continues to render to contracting states vital services in form of technical assistance, policy and guidance materials as well as researches and studies conducted in various aspect of civil aviation.

As the process of liberalization progresses, there will be need for ICAO to:

- a. Conduct a study on the effects of franchising
- b. Recommend a code of conduct that will govern healthy competition among carriers
- c. Recommend the nature and form of the arbitration and the procedures to be followed in resolving disputes that may arise between Member States