



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

**Session 1: The Liberalization Experience**

**The Multilateral Agreement on the Liberalization of  
International Air Transportation**

***Presentation by:***  
**John Kiser**  
**Chief, Pricing and International Affairs Division**  
**Office of International Aviation**  
**United States Department of Transportation**

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THE MULTILATERAL AGREEMENT ON THE  
LIBERALIZATION OF INTERNATIONAL AIR  
TRANSPORTATION

(The “MALIAT” or “Kona Agreement”)

REMARKS OF JOHN H. KISER  
CHIEF, PRICING & MULTILATERAL AFFAIRS DIVISION, OFFICE OF  
INTERNATIONAL AVIATION  
U.S. DEPARTMENT OF TRANSPORTATION

Background

The Multilateral Agreement on the Liberalization of Air Transport (the Multilateral) represents the first successful multilateral effort based on the “open skies” template to remove barriers to improved air services.

While the Multilateral is not an “APEC agreement” the original signatories are all APEC (Asia Pacific Economic Cooperation) economies and clearly the seed was planted in that forum. It had its genesis in the 1994 **Bogor Declaration of Common Resolve**, in which APEC Leaders committed to free and open trade and investment between member economies. At the first APEC Transportation Ministerial Meeting in June 1995, Ministers agreed to create a special Air Services Group, as part of the APEC Transportation Working Group, to develop options for more competitive air services with fair and equitable opportunity for all APEC member economies. The Group went on in 1998 to identify **eight options/recommendations** related to the provision of air services, *i.e.*, designations, market access, tariffs, carrier ownership and control, doing business, air freight, charters and cooperative arrangements, for voluntary implementation by economies.

This work of the Air Services Group was reinforced by the **Auckland Declaration** in September 1999 in which APEC leaders stated “we support implementation of the eight steps for more competitive air services, and the identification of further steps to liberalize air services in accordance with Bogor Goals. Tourism and air services have a large contribution to make to development and community building in the region.”

Following this lead, under the auspices of APEC, economies were invited to submit proposals (“think pieces”) for the further liberalization of air services to be discussed at a meeting in Singapore in March 2000. At that meeting it was concluded that the

Transportation Working Group would pursue further steps to liberalize air services on a voluntary basis. In this context, one option raised for consideration was the exploration of plurilateral arrangements by like-minded APEC economies.

While some economies questioned the pursuit of a multilateral agreement by a group of like-minded economies, APEC clearly recognized that some APEC members could pursue, at their own pace, the conclusion of a liberal, open skies multilateral arrangement.

In August 2000, five like-minded economies that had expressed interest in exploring the possibility of a plurilateral agreement, namely, Brunei Darussalam, Chile, New Zealand, Singapore and the United States, met informally in Honolulu to discuss this possibility. The five delegations reached understandings on a number of issues and agreed to undertake further analysis and drafting aimed at reaching a conclusion as soon as possible.

The five economies met again in Hawaii at the end of October 2000. At that meeting very significant progress was made and a final text was nearly agreed. The meeting was followed by extensive communications between delegations, mostly by e-mail, and the text for a multilateral agreement was agreed upon in principle, and announced in Brunei at the Leaders Meeting on November 15. The Agreement was formally signed by the five countries on May 1, 2001.

### **Key Features of the Multilateral**

In most major respects, the Multilateral Agreement tracks open skies agreements that most of the five economies had previously signed with one another. In this regard, its key features are:

- an open route schedule;
- open traffic rights including seventh freedom cargo services;
- open capacity and frequency;
- operational flexibility, including change of gauge, aircraft type, co-terminalization, and intermodal rights;
- unlimited airline designation;
- unlimited code sharing, including third-country code sharing;
- open pricing and a minimal tariff filing regime.

In addition to provisions on the above subject, which are identical or very similar to those found in open skies bilateral agreements, it has some ground breaking elements:

- Specifically, the Agreement contains provisions eliminating the traditional ownership provisions found in most bilateral agreements that require an air carrier to be substantially owned by either nationals of its home country or the homeland government. Thus, air carriers of economies under the Agreement now have enhanced access to outside investment. A designated carrier must, however, still be effectively controlled by the designating economy, its nationals or both, and be incorporated and have its principal place of business in the territory of the designating economy, thus ensuring that airlines retain a strong link to the homeland.
- The Agreement specifically states that it does not affect a party's laws or regulations concerning ownership and control of its own designated airlines.
- A proviso that the party receiving the designation may refuse to grant operating authorization where it determines that the airline is substantially owned by its own nationals was seen as providing an additional assurance against "flags of convenience."
- The Agreement eliminates any distinction between charter and scheduled services.
- The Agreement also streamlines and standardizes safety, security, CRS and "doing business" clauses (*e.g.* customs exemptions, commercial opportunities, user charges, and remittances), which often differ in minor detail from one bilateral agreement to the next.
- The Agreement expands the bilateral template to a multilateral one, effectively dealing with novel issues for a multilateral agreement involving such matters as accession, amendments, dispute resolution and the relationship of the Multilateral to other agreements. In this regard the Agreement specifies that existing bilateral agreements between the Parties are suspended as long as the Multilateral remains in force between those Parties.
- There is also an optional Protocol to the Agreement that allows parties to exchange seventh freedom passenger and cabotage rights, providing a "club within a club" model for willing partners to extend liberalization to new areas. Brunei, New Zealand and Singapore have signed the Protocol.
- Although, as stated above, the Multilateral had its genesis in APEC, and contains provisions specifically permitting all APEC economies to join, its membership is not restricted to APEC economies. States and economies from outside APEC are welcome to accede and thereby expand opportunities available to all under the Multilateral.

On December 21, 2001, Peru deposited its Instrument of Accession to the Multilateral and the agreement entered into force as between Peru and all Parties on May 17, 2002.

On July 4, 2002, Samoa, a non-APEC country, deposited its Instrument of Accession to the Multilateral and it entered into force as between Samoa and all Parties on October 10, 2002.

We believe that this important new agreement represents a simplified way to extend the benefits of liberalization to more markets, and hope that others – whether or not they are APEC members – will accede to the Agreement. We are also working with our partners to explore the possibilities of a cargo-only version of the Agreement, recognizing that there are virtues to liberalizing air cargo services independently of passenger transport, and that some countries may be willing to liberalize cargo on an expedited basis.

### **Benefits of the Multilateral Agreement**

While air services continue to expand through bilateral and regional agreements, the continuing requirements for air carriers to obtain government approval for changes to routes, schedules and prices (particularly where this may require alterations to restrictive bilateral arrangements) inhibits further development of trade and tourism.

Experience under bilateral open skies agreements has demonstrated that such agreements can lead to significant growth in traffic between the parties involved to the benefit of airlines, airports, consumers, communities, the tourism industry, and national economies.

The Multilateral Agreement builds on the progress made under bilateral open skies regimes and provides a coherent, streamlined mechanism for expanding commercial aviation relations. It improves the access of airlines based in economies with small capital markets to broader sources of investment. The ability to achieve open access to numerous markets in one agreement at one time should be of particular benefit to nations with limited negotiating resources.

In sum, the Agreement allows nations to gain market access more readily than could be achieved through individual bilateral agreements. The Multilateral approach offers the prospect of air services being operated more freely across the globe, meeting the requirements of the world's traders, travelers and shippers.