



WORKING PAPER

WORLDWIDE AIR TRANSPORT CONFERENCE

SIXTH MEETING

Montréal, 18 to 22 March 2012

Agenda Item 2: Examination of key issues and related regulatory framework

Agenda Item 2.1: Market Access

EXPANDING MARKET ACCESS FOR INTERNATIONAL AIR TRANSPORT

(Presented by the Secretariat)

EXECUTIVE SUMMARY

This working paper examines issues relating to liberalization of market access, focusing on exchange of traffic rights, and discusses possible ways by which to move forward. Issues relating to other aspects of market access such as air cargo services, airport slots allocations, and night flight restrictions are addressed in separate working papers under this agenda item.

Action: The Conference is invited to:

- a) review the information, assessments and discussion presented in this paper;
- b) endorse the conclusions presented in paragraph 5; and
- c) adopt the recommendations presented in paragraph 6.

References: ATConf/6 reference material is available at www.icao.int/meetings/atconf6.

1. INTRODUCTION

1.1 Expanded market access is fundamental to the development of the global air transport system, as all international air services are operated under the market access rights granted by States. Restrictions on market access remain one of the major barriers to achieving a more efficient regulatory framework for international air services, increasing route connectivity and securing maximum benefits from the aviation sector for States and citizens.

2. RECENT DEVELOPMENTS

2.1 Since the Fifth Worldwide Air Transport Conference (ATConf/5, 2003), more States have embraced liberalization. Air services agreements granting largely unrestricted market access rights beyond Third and Fourth Freedoms (the nine Freedoms of the Air are detailed in Appendix A), often referred to as “open skies agreements” (OSAs) have become widespread. From 1992 to October 2012, more than 400 open skies agreements had been concluded involving 145 States, representing 76 per cent of the ICAO membership, as illustrated in Appendix B. Nevertheless, granting of cabotage rights (Eighth and Ninth Freedoms) is still the exception, registered only within the European Union (EU) and by a few other States in other regions of the world.

2.2 In the past decade and following the experience of the EU, States in Africa, Asia, Caribbean, Latin America and Middle East have also adopted regional liberalization programmes, including commitments to fully liberalized arrangements.

2.3 The growing number of liberal agreements, including OSAs, is a positive trend for building the basis for wider consensus towards multilateralism in the exchange of commercial rights, which remains one of ICAO's goals. While the prospect of multilateralism is improving, the majority of States continue to use the bilateral approach in pursuing liberalization.

2.4 At the same time, recent years have seen calls in some quarters for restraint in opening up markets and some reluctance to lift all capacity limits, although outright demands to roll back liberalized agreements have been rare. In some cases, these may be caused by concerns over an "un-level playing field" or by changes in competitive dynamics. Calls for retrenchment may also reflect the view that airlines of both parties to an air services agreement should not only enjoy an equal opportunity to operate and compete but should also maintain for each airline a significant share of the market. An unfavourable economic climate may also be a factor influencing the attitude.

2.5 The air transport industry continues to undergo structural changes, and the marketplace has become more competitive. Innovative and new business models, such as low cost carriers, are now widespread. Faced with many challenges, such as the impact of financial crises, economic slowdown, rising fuel costs, and regulatory constraints, the airline industry has repeatedly called for more commercial freedom to respond to a changing market and, in some cases, for the replacement of the bilateral system. In general, the aviation community faces the increasing anomaly between a pre-liberalization, nation-based regulatory structure and a post-liberalization global market place. Resolution of this dichotomy will require concerted efforts and bolder steps.

2.6 At the 37th Session of the ICAO Assembly, the leadership role that ICAO should play in this respect was strongly supported.

3. ICAO WORK AND POLICY GUIDANCE

3.1 ICAO has developed considerable policy and guidance material on market access. The guidance consists of relevant Assembly resolutions, model clauses for air service agreements, and conclusions, recommendations and declaration of the air transport conferences, which are contained in Doc 9587, *Policy and Guidance Material on Economic Regulation of International Air Transport*. One principle worth noting is that "States should continue to pursue liberalization in this regard at their own choice and own pace, using bilateral, regional, multilateral avenues as appropriate" (ATConf/5 conclusion).

3.2 The Template Air Services Agreements (TASAs) developed by ICAO, and endorsed by ATConf/5, provided useful guidance on liberalization and has been used by States in expanding air services relations. The TASA remains a "living document" to be updated periodically as liberalization evolves.

3.3 After careful study and preparation, ICAO introduced the first ICAO Air Services Negotiation Conference (ICAN) in 2008. ICAN provides a central meeting place for States to conduct bilateral negotiations in a one-stop fashion, thus greatly improving the efficiency of the negotiation process. Since its inception, this event has been held annually in different regions with growing participation. By 2012 a total of 107 countries (56 per cent of the ICAO membership) had utilized this facility at least once, resulting in the signing of over 300 air service agreements and arrangements.

3.4 When reviewing possible ways to facilitate liberalization in 2009, the ICAO Council determined that most of the existing ICAO policy guidance remains relevant and valid, and that the main problem is not a lack of policy guidance but rather a lack of awareness or application by States.

4. DISCUSSION

4.1 Nearly 70 years after the establishment of ICAO in 1944, the aviation community faces a historic opportunity at ATConf/6 to review the current situation and explore possible ways to move forward so as to modernize the global regulatory regime for the efficient and sustainable development of international air transport along the lines of the Chicago Convention preamble. Presented below are possible options to facilitate further liberalization of market access in respect of traffic rights.

4.2 As most of the existing ICAO guidance is still relevant and valid, ICAO can make more effort to promote and raise State awareness of ICAO guidance, keep it current and responsive to the needs of States, and encourage its wider use. ICAO should continue to provide the ICAN facility to States to enhance the efficiency of the air service negotiation process, and to encourage its use for not only bilateral but also plurilateral or multilateral consultations or negotiations.

4.3 Experience in the past two decades has demonstrated that liberalization of market access can be achieved through unilateral, bilateral, regional and multilateral approaches. States should be encouraged to continue doing so in the future.

4.4 Another way to overcome the weaknesses of the bilateral system and improve the global regulatory process and structure is for ICAO to assume a leadership role in developing a multilateral approach to facilitate market access expansion. It may take the form of an international agreement under which parties commit to remove restrictions on core Freedoms of the Air. The development of such an agreement could benefit from past experiences and build on what has been achieved, such as OSAs, regional liberalization arrangements, and plurilateral or multilateral agreements. In light of the disparity in States' needs and circumstances, such an agreement could be designed for signature by the "willing and ready" parties initially, for instance, by States already having OSAs with each other, and open for accession by any ready parties subsequently.

4.5 Such an undertaking will require substantial incremental work by ICAO, including further study and consultation with experts and States, especially on the specific coverage and provisions. While the task is challenging, the prospect of achieving the goal has become more encouraging in that there is increasing and widespread acceptance of market access liberalization, evidenced by the large number of liberal or open-skies type agreements, including some regional, plurilateral or multilateral agreements.

4.6 A recent survey of States (State Letter SC 6/1-12/57 dated 4 October 2012) has revealed that 85 per cent of the responding States (52 out of 61) support ICAO taking such action. It would represent an historical step taken by the aviation community to create a more efficient and effective global regulatory regime for the sustainable development of international air transport.

5. CONCLUSIONS

5.1 In light of the discussion above, the following conclusions may be drawn:

- a) since ATConf/5, more States have embraced liberalization of market access. The air transport industry continues to call for more commercial freedoms and regulatory flexibility. More regions have adopted intra-regional liberalization programmes, including open market access commitments;
- b) while momentum is building towards more open or even full market access between and among States, some States remain reluctant to endorse full liberalization of markets or to go beyond the bilateral approach towards a multilateral agreement for exchange of traffic rights. Some of the factors impeding liberalization include a lack of awareness of, or confidence in, the benefits of market opening, a lack of political

will by some governments, and in some cases, the influence of some airlines over government decision making; and

- c) before a globally acceptable substitute is in place, the bilateral approach continues to be the primary tool used by the majority of States to exchange commercial rights for international air transport. However, there is a need for the aviation community to modernize the global regulatory regime to achieve more efficient and sustainable international air transport. In this regard, ICAO could play a leadership role in facilitating and assisting further liberalization and in leading the development of policy guidance and regulatory arrangements.

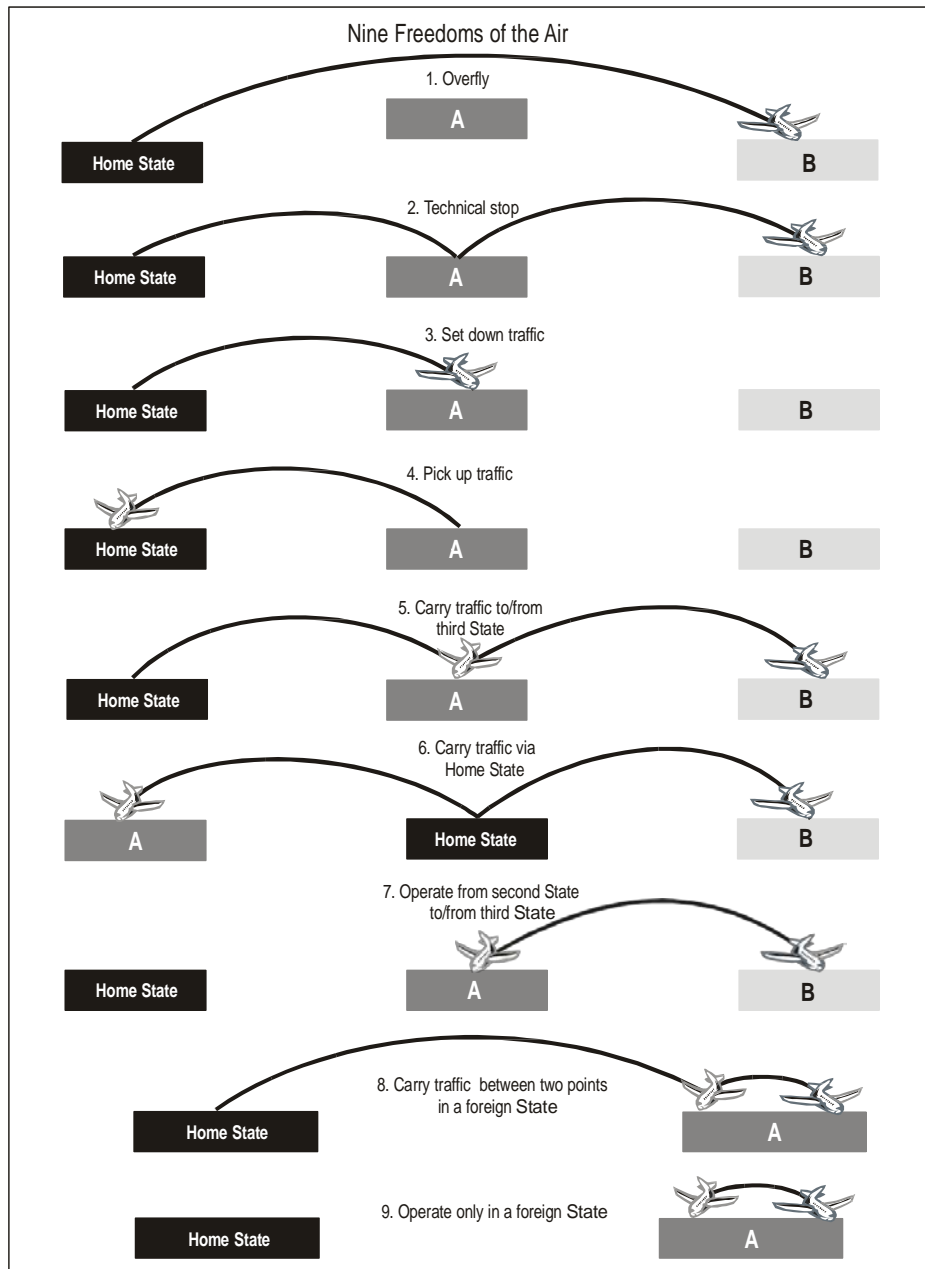
6. **RECOMMENDATIONS**

6.1 The following recommendations are proposed for consideration by the Conference:

- a) States should be encouraged to use the ICAN facility for plurilateral or multilateral negotiations, as ICAN has proven its value as a platform for States and therefore could be used for Regional Integration Organizations, having the power to represent States in negotiation of air services agreements, with the objective to enhance the efficiency of air services negotiations and, as a consequence, to forge a path toward greater liberalization;
 - b) ICAO should continue to play a primary role in developing policy guidance for international air transport regulation, take concrete actions to facilitate regulatory evolution, and pursue its objective of multilateralism in the exchange of commercial rights;
 - c) ICAO should assume a leadership role in developing an international agreement to facilitate market access expansion by States, as discussed in paragraphs 4.4 and 4.5, taking into account the interest of all States and aviation stakeholders;
 - d) ICAO should take more vigorous measures to promote its policy and guidance material on air transport regulation and liberalization, keep them current and responsive to the changing situation and requirements of States and stakeholders, and facilitate and assist States in the liberalization process;
 - e) ICAO should consider additional means to facilitate liberalization, such as preparing and publishing case studies on liberalization experiences of States, and developing indicators of market access liberalization by States
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APPENDIX A

FREEDOMS OF THE AIR

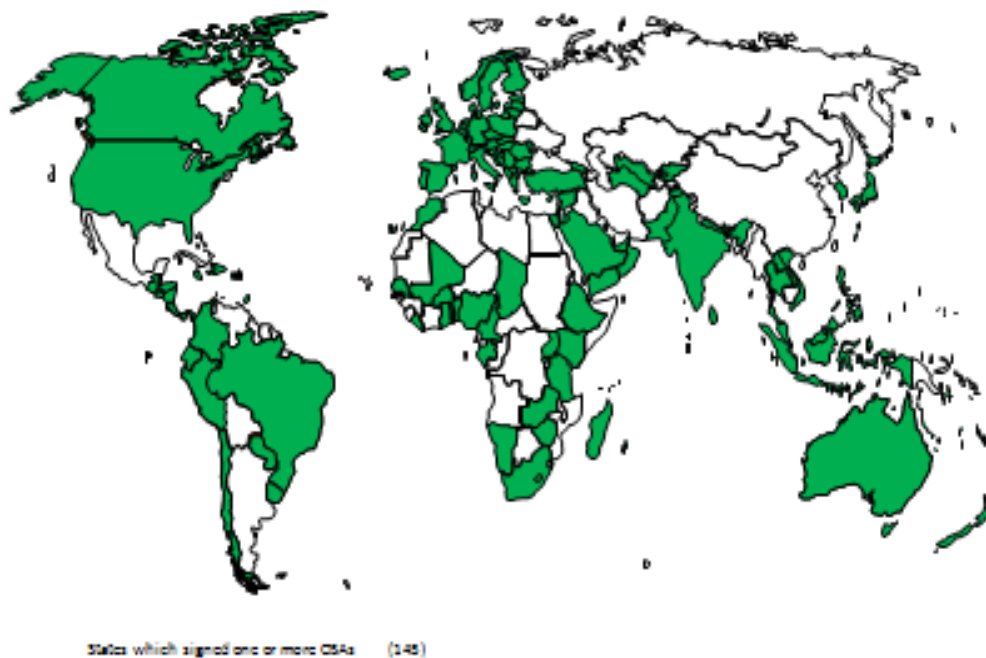


APPENDIX B

STATES HAVING SIGNED BILATERAL OPEN SKIES AGREEMENTS

1. The dark coloured areas in Figure 1 below indicate the States that have signed one or more bilateral open skies agreements*. Since 1992, a total of 145 States have signed one or more open skies agreements (representing 76 per cent of the ICAO membership).

Figure 1: STATES INVOLVED IN BILATERAL OPEN SKIES AGREEMENTS



* *The term “open skies agreements”, while having not been uniformly defined by its advocates, is used generally to refer to the type of agreement that would create a regulatory regime that relies chiefly on sustained market competition for the achievement of its air services goals and is largely or entirely devoid of a priori government management of access rights, capacity and pricing, and other ancillary rights for airline commercial activities (Source: Doc 9626, Manual on the Regulation of International Air Transport).*

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