



WORKING PAPER

WORLDWIDE AIR TRANSPORT CONFERENCE (ATCONF)

SIXTH MEETING

Montréal, 18 to 22 March 2013

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

Agenda Item 2.2: Air carrier ownership and control

PROPOSAL FOR THE LIBERALIZATION OF AIR CARRIER OWNERSHIP AND CONTROL

(Presented by Chile)

EXECUTIVE SUMMARY

This working paper summarizes experience of Chile as a pioneer State in terms of liberalization of air carrier ownership and control, and proposes that ICAO should develop a multilateral agreement to liberalize this aspect of air transport in order to facilitate airlines' access to capital markets.

Action: The Conference is invited to agree to the recommendation presented in paragraph 3.

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

1. CHILE'S EXPERIENCE WITH AIR CARRIER OWNERSHIP AND CONTROL

1.1 Since the very beginning, back in 1979, the commercial air policy of Chile has worked towards the elimination of the nationality requirements for both Chilean and foreign owners and administrators of air carriers and in fact Chile has been a pioneer State in this field. Consequently, from this period onwards, nationality of a Chilean air carrier has been established by its link to the national territory rather than by the nationality of its owners or administrators. The nationality of a foreign air carrier is established by the qualification given by the Designating State.

1.2 Since the inception of this system in Chile, there have been three cases of scheduled Chilean air carriers where all of their owners and administrators were foreigners, and two cases where some were nationals and some were foreigners. There are various cases amongst foreign air carriers that have operated in Chile where the owners did not have the nationality of the designating State, but since Chile does not apply the nationality requirement to owners, the Chilean authority has accepted the nationality qualification given by the Designating authority.

¹ Spanish version provided by Chile.

1.3 During the 33 years of application of this system, no State has ever raised an objection about the designation of a Chilean airline related to the fact that it was not substantially owned by Chileans. Therefore, the airlines designation clause which requires that substantial ownership and effective control should be in national hands, and which appears in many of the bilateral Air Service Agreements signed by Chile in the past, has not been a barrier for Chilean airlines to operate abroad.

1.4 Nevertheless, whenever the Chilean authority has negotiated bilateral agreements, it has always sought to ensure that the requirement for the airline to be substantially owned and effectively controlled by nationals of the Designating State does not appear in the airlines designation clause but rather, it is sufficient to require that the airline's main residence and principal place of business is located in the Designating State. All of the bilateral agreements negotiated by Chile over the last ten years have been established in this way.

1.5 With regard to the requirement for an air carrier to have a link with the national territory in order to be able to obtain Chilean nationality and use Chile's traffic rights, there are no legal or regulatory requirements that exist for establishing this link. Instead, the criterion which has been applied stipulates that the air carrier must clearly have its principal place of business in Chile, which it must then prove through a given set of circumstances which, without being exhaustive, must include: the majority of the aircraft are based in Chile; these aircraft are registered in Chile, their crew are Chilean and their maintenance is done in Chile. This criterion which requires that the aircraft must be based in Chile has recently undergone certain changes; this requirement is defined in terms of the Chilean Aviation Authority having the regulatory control. If the aircraft also have Chilean crews and are registered in Chile, then the air carrier can consider itself as Chilean.

1.6 This liberalized approach which Chile has adopted when granting Chilean nationality to an air carrier has contributed to the success of Chile's commercial air policy. Allowing ownership and control of a Chilean air carrier to become totally in the hands of foreigners has boosted foreign investment in Chilean airlines but what's more, it has also boosted national investment in Chilean airlines. This is due to the fact that national investors consider that publicly traded shares of a Chilean airline are worth more if they can be listed on foreign stock exchanges and purchased by foreigners, as opposed to restricting the purchase thereof to nationals only.

2. CONCLUSION

2.1 In accordance with the Chilean experience described above, Chile proposes that ICAO should develop a draft multilateral agreement on global liberalization of air carrier ownership and control.

3. RECOMMENDATION

3.1 The Conference is invited to request ICAO to develop a draft multilateral agreement on global liberalization of air carrier ownership and control.