



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 2.1 : Market access

Agenda Item 2.2: Air carrier ownership and control

Agenda Item 2.5: Safeguards

Agenda Item 2.8: Implementation of ICAO policies and guidance

A TOURISM PERSPECTIVE ON INTERNATIONAL AIR TRANSPORT REGULATION

(Presented by the World Tourism Organization (UNWTO))

EXECUTIVE SUMMARY

The World Tourism Organization (UNWTO) supports and fosters the liberalization of travel and tourism regulation in a responsible way because experience continues to demonstrate that this contributes significantly to economic and social development. Responsible in this context may be equated with achieving a balance among environmental, economic and socio-cultural aspects of sustainable development. Both the regulatory framework and the content regarding international air transport remain a unique incongruity not just in travel and tourism but in a globalized world economy, placing financial and market access constraints on carriers, limiting connectivity and sustainable growth in travel and tourism. This paper addresses ways and means of modernizing this regulatory approach in a progressive fashion.

Action: The Conference is invited to consider the economic regulation of international air transport in the broad context of tourism and trade and agree to the related recommendations presented in paragraph 4.

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

1. INTRODUCTION

1.1 Access by air is key for both developed and developing countries and as such is air transport market liberalization. The on-going market access constraints are magnified when they are translated to tourism (which includes both business and leisure visitors) with substantial ramifications for major economies and small tourist destinations alike. For many of the world's poorest countries, tourism is, or has the potential to be, their major export; but without attractive air services the benefits of tourism for these countries are limited.

1.2 Air service reciprocity continues to take precedence in too many countries over a broader assessment of economic and social benefits from tourism and trade. There is an increasing need for the evolution of economic regulatory regimes for air transport, nationally, regionally and globally, which go beyond narrow sectorial interests and provide the optimum overall benefits for the economy.

1.3 To advance the interests of the tourism sector and promote the basis for liberalization, an important step is to measure accurately the scale and economic impact of tourism and articulate the results effectively so that governments may strike a more equitable policy balance. The adoption and thorough implementation of the World Tourism Organization (UNWTO) *Tourism Satellite Account*¹ is one of the measures governments can take to understand better the economic impact of tourism, verifiable by international standards.

2. IMPROVING CONNECTIVITY

2.1 Policies that limit air connectivity² continue to present major barriers to the growth of travel and tourism in both large and small markets, and the UNWTO's Executive Council as well as a Tourism Ministers meeting last year decided that promoting increased air connectivity is a priority for the Organization. Studies *inter alia* from the World Bank have shown that the measure of connectivity is closely correlated with important economic variables including the degree of liberalization of air transport markets³.

2.2 Connectivity could be improved through carefully designed regulatory liberalization encompassing market and capital access in the context of tourism and trade, notably in terms of more "open skies", freeing up air carrier ownership and control restrictions, and developing a framework "beyond bilateralism".

2.3 "Open skies". This means freedom of access capacity and frequency for both "national" and other carriers. Clearly, such a broadly liberalized environment must be associated with safeguards, notably including assurance of service, fair competition, rights and responsibilities of providers and users, and transparency (as spelled out by the ICAO Secretariat in ATConf/6-WP/3 and WP/4). Historically, assurance of service was frequently sought through the medium of fostering a "national" carrier, often requiring substantial state subsidy. However, in today's globally competitive environment, financially non-viable "national" carriers have been allowed to disappear, in both developed and developing countries, and other carriers (with principal place of business not necessarily in the country concerned) have taken their place, generally with success. The appearance of new business models, including airlines with transborder bases, low cost subsidiaries and low cost stand-alone carriers, is helping this process.

2.4 In this context, UNWTO believes that the *Essential Service and Tourism Development Route* (ESTDR) concept developed jointly by ICAO and UNWTO after the last Air Transport Conference⁴, could play a significant role in the evolving global air transport network. Originally

¹See <http://statistics.unwto.org/en/content/conceptual-framework-tsa-tourism-satellite-account-recommended-methodological-framework-tsar>.

² While there is no universally agreed definition of "air connectivity", UNWTO follows a general understanding that it is an overall measure of the level of service - the range and economic importance of origins/destinations, the reliability and frequency of flights and connections - available through a country's aviation system linkage to the global air transport network. The higher the level of connectivity, the greater the level of access to the global economy. Facilitation measures in terms of passenger flow through airports are a condition of connectivity and, more broadly, facilitation of visa processing (where required) is a necessary pre-requisite.

³ *The Air Connectivity Index: Measuring Integration in the Global Air Transport Network* (<http://elibrary.worldbank.org/content/workingpaper/10.1596/1813-9450-5722>).

⁴ See http://www.icao.int/sustainability/pages/Eap_ER_Databases_EssentialRouteScheme.aspx.

developed as a liberalization safeguard, ESTDR takes existing instruments such as Essential Air Services in the United States, Remote Air Services in Australia and Public Services in the European Union, and applies them to routes to and from Least Developed Countries. An implementation framework may be achieved simply through amended regulatory provisions (bilateral restrictions not being particularly conducive to evolution of the model) but in the event subsidy is required this can be determined through competitive tender to provide the specified services for the least financial compensation (which is set against the overall economic benefits of the services).

2.5 Several States are currently considering application of an ESTDR-type arrangement, both domestically and, in a few cases, internationally. With the increasing fragmentation of services in small markets in recent years, UNWTO believes that the ESTDR concept could play a much larger role than originally envisaged and serve not just as a safeguard but as a fundamental developmental tool, *inter alia* opening up the potential for route franchising and improved connectivity.

2.6 *Air carrier ownership and control.* Multilateral provisions on air carrier ownership and control (rather than their being vested in the citizens of a single State or group of States) could reduce the need for indirect means of obtaining market access (such as code-sharing), improve safety and security regulation, limit uncertainty regarding liability, and produce substantial economic benefits for air transport, tourism and the economy at large.

2.7 The primary focus should be on lifting national or community air carrier ownership and control provisions out of air services agreements and agreeing on acceptance of ownership and control provisions based on “principal place of business” in one or more of the participating States. UNWTO noted with great interest the Draft of a *Multilateral Convention on Foreign Investment in Airlines* presented by the United States at the 37th Session of the ICAO Assembly⁵. This takes a practical, straightforward and immediately implementable approach by invoking the waiver in bilateral air services agreements requiring designation of carriers by each party limited to those owned and controlled by interests from their territories; endorsement and promotion of the draft Convention by ICAO could prove to be a breakthrough.

2.8 *Beyond bilateralism:* The discussion above has focused on the *content* of regulation. There is also a need to overhaul the *structure and process* which, with the notable exception of services within Europe, has been largely unchanged in more than 65 years. The Conference might consider economic regulatory issues including both “open skies” and air carrier ownership and control in the context of development of a plurilateral framework, the basic premise being that adherence by two parties to a liberalized regulatory arrangement with other parties would over-ride the relevant provisions in an existing bilateral agreement between them.

2.9 The ICAO Air Service Negotiation Conferences (ICAN) provide a central meeting place for States to conduct their air service negotiations. By enabling each participating State to conduct meetings with several bilateral partners at the same location, the conferences greatly improve the efficiency of the negotiation process. This is clearly a welcome activity, but there is potential for enhanced utilization of this facility. UNWTO fully supports the view expressed by the ICAO Secretariat in ATConf/6-WP/13 that the ICAN facility might be used not just for facilitating bilateral negotiations but also for exploring approaches which are broader in scope. ICAO could consider taking a more pro-active role in helping States to move forward with liberalization, for example by fostering a complementary but more innovative and less restrictive concept at the Conferences through analysis and promotion of a plurilateral approach. The basis could be a liberal arrangement by a founding “Club of the Ready and Willing”, with new members gradually coming in until critical mass is achieved.

⁵ See http://legacy.icao.int/icao/en/assembl/a37/wp/wp190_en.pdf.

3. TOWARDS A NEW REGULATORY FRAMEWORK

3.1 UNWTO has consistently propounded a studied and positive approach to air transport liberalization within the framework of the World Trade Organization and its General Agreement on Trade in Services, which fully encompasses tourism but not air transport. Larger issues have effectively stymied the development of revised trading agreements by the World Trade Organization for a number of years and return to substantive address of the General Agreement on Trade in Services (GATS) Annex on Air Transport Services is not envisioned for at least some time. While this is disappointing, it provides an opportunity for ICAO to develop its own construct on liberalization. A way forward might be for the Organization to develop an air transport regulatory framework along the lines of World Trade Organization provisions but falling under the aegis of ICAO itself.

4. RECOMMENDATIONS

4.1 The Conference is invited to:

- a) request States to base their assessment of international air service needs on the basis of the broad economic and social benefits for their societies, including tourism and trade as well as aviation factors;
- b) urge States to consider the application of the *Essential Service and Tourism Development Route* concept developed jointly by ICAO and UNWTO both as a safeguard and as an economic and social developmental tool;
- c) request ICAO and UNWTO, both separately and jointly, to provide further guidance and actively promote a) and b) above;
- d) request ICAO to actively promote liberalization of air carrier ownership and control, in the first instance through endorsement and promulgation of the draft *Multilateral Convention on Foreign Investment in Airlines*;
- e) request ICAO, in its consideration of modernizing the air transport regulatory framework, to take due account of the provisions of the General Agreement on Trade in Services; and
- f) urge ICAO and UNWTO to position travel and tourism collectively as a strategic sector, with air transport as an interconnected core.

— END —