

## **LIBERALIZATION OF AIR TRANSPORT SERVICES WITHIN THE CARIBBEAN COMMUNITY**

(Submitted by the Caribbean Community (CARICOM) Secretariat)

### **1. INTRODUCTION**

1.1 The Caribbean Community (CARICOM) was established by the Treaty Establishing the Caribbean Community which was signed at Chaguaramas, Trinidad and Tobago, on 4 July 1973 by Barbados, Guyana, Jamaica and Trinidad and Tobago. The membership of CARICOM has since increased to fifteen members, representing a total population of about 14.8 million, to include Belize in Central America, Suriname on the northern shoulder of South America, and the Caribbean islands of Antigua and Barbuda, The Bahamas, Dominica, Grenada, Haiti, Montserrat, Saint Lucia, St. Kitts and Nevis, and St. Vincent and the Grenadines. The Caribbean islands of Anguilla, the British Virgin Islands, Cayman Islands, and the Turks and Caicos Islands are Associate Members.

1.2 Haiti which recently became a member has a population of about 8.4 million whilst the population of the other fourteen members ranges between 5,272 and 2,605,787. Apart from Suriname and Guyana, which share a common border, Member States are separated by vast expanses of water and consequently are critically dependent on air services for intra-Community travel. Peculiar challenges face many of the smaller States, as a result of the low density and directional traffic which they generate, and the absence of jet airports which necessitates the operation of feeder services to and from adjacent countries in order to maintain links with regional and foreign markets.

1.3 Since its inception CARICOM has focused on promoting the integration of the economies of its members, coordinating the foreign policies of the politically independent, and pursuing functional cooperation in a number of areas, including air transportation. A major initiative currently underway is the deepening of the integration process through the formation of a Single Market and Economy (SME). All internal restrictions or discriminatory measures are to be removed by Member States by the 31 December 2005. This has already been achieved with respect to goods which satisfy requirements of rules of origin. The Treaty has been revised recently to provide the enabling legal and institutional infrastructure for the formation and operation of the SME. The Revised Treaty prohibits the introduction of new restrictions and requires the removal of existing ones in respect of the right of establishment, the provision of services and the movement of capital by nationals of the Community. It also commits Member States to the goal of free movement of nationals. These measures apply across all sectors and impact significantly on the initiatives to liberalize air transport services within the Community.

## **2. ELEMENTS OF THE REVISED TREATY OF CHAGUARAMAS RELATIVE TO AIR TRANSPORTATION**

2.1 Chapter Six of the Revised Treaty of Chaguaramas embodies the Community Transport Policy. It establishes the goal of the Policy and specifies the objectives for achieving that goal. It expands the scope of the original Treaty which provided essentially for functional cooperation, and creates the enabling environment for the development of a comprehensive, safe and seamless transportation system within the Community.

2.2 The Revised Treaty requires:

- a) the coordination of the national transport policies of Member States;
- b) the implementation of uniform regulations and procedures in areas such as transport operations, safety, licensing and certification;
- c) the development of institutional, legal, technical, financial and administrative support for the transport sector;
- d) the facilitation of investment in the transport sector involving joint ventures;
- e) the acquisition and transfer of technology; and
- f) the removal of obstacles to the provision of transport services by CARICOM nationals anywhere within the Community.

2.3 The Revised Treaty also makes general provisions for the conclusion of agreements among Member States designed to facilitate the provision of air transport services. There are also provisions for the adoption of uniform standards and recommended practices and the establishment of measures to ensure that the provision of international air transport services in the Community is undertaken by financially viable and technically qualified carriers and operators, and that the Community's interest in safety, security and economy of air travel is not prejudiced.

2.4 Pursuant to the provisions of the Revised Treaty programmes are being developed to assist Member States in the discharge of their obligations with respect to the removal of restrictions in the air transportation sector within an agreed time frame. These programmes when finalized will be approved and their implementation monitored by a Ministerial Council whose portfolio includes transportation.

2.5 Further, within the scope of the Revised Treaty the Directorates of Civil Aviation of Member States have recently formed an Association of Civil Aviation Authorities of the Caribbean (ACAAC) and the formal structure of a Regional Aviation Safety Oversight System (RASOS). Through training and the pooling of skills, RASOS will assist Member States in the discharge of their safety oversight obligations and enhance aviation safety and security.

### 3. CARICOM Multilateral Air Services Agreement (MASA)

3.1 In addition to the Revised Treaty which makes general provisions for the development of the transport sector, there is the Multilateral Agreement Concerning the Operation of Air Services within the Caribbean Community (commonly called the CARICOM Multilateral Air Services Agreement) which focuses on the exchange of route and traffic rights within the Community. The mandate for the preparation of the latter instrument was derived from decisions taken by the Conference of Heads of Government, the supreme Organ of the Caribbean Community, in March 1993. That mandate was given against the backdrop of initiatives to privatize national air carriers of Member States, the possible multi-national ownership of such carriers and the absence of a formal multilateral framework for the regulation within the Community of the commercial operations of carriers registered in the Community.

3.2 An examination of the aeronautical agreements filed with the International Civil Aviation Organization (IACO) had revealed that at the beginning of 1991, there were three bilateral air services agreements in force among the Member States of the Community. As national carriers moved towards privatization and multinational ownership, it was believed that they could not continue to operate or be competitive in an environment in which their sustained operation was uncertain due to an inadequate system of informal arrangements among the States for the conduct of air services. The formalization of current arrangements among the States and the conclusion of new ones in the wider Region were considered to be necessary for the development of regional air transportation, an important component of the Single Market the establishment of which is being pursued.

3.3 The CARICOM MASA promotes the objectives of the Community and provides the required regulatory framework within which a CARICOM air carrier, that is, an air carrier which is registered in a Member State, the majority of whose shares are owned by one or more Member States and/or their nationals, can provide air transport services between the Member States which are parties to the Agreement.

3.4 The experiences of the Andean Pact countries with regard to the implementation of their multilateral air transport arrangement, and those of the European Union in establishing its single market in transportation, are of particular interest to CARICOM as it seeks to develop its own arrangements within the context of a Single Market and Economy.

3.5 It is recognized that there are characteristics which are peculiar to the respective transport systems of the two economic groupings, *vis-à-vis*, the system of the Caribbean Community with respect to market size, proximity of States, size of carriers, legislative arrangements and supporting civil aviation infrastructure. There are also varying degrees of success in the implementation of the respective agreements of the economic groupings but the common aim of their policies is liberalization and the expansion of market opportunities for their air carries within their respective groupings.

3.6 The main elements of the CARICOM MASA are as follows:

- a) the Agreement concerns the operation only of CARICOM air carriers. It allows all types of air services to be performed within the Community by those carriers designated by contracting States;
- b) more than one carrier can be designated by a Contracting State to exercise the traffic rights granted under the Agreement. However, account has to be taken of such factors as the characteristics of the market and the likely impact of new operators on the operation of existing carriers;

- c) the traffic rights covered by the Agreement include the right to carry traffic between a Contracting State in which the carrier is registered and another Contracting State; and on a reciprocal basis, the right to carry traffic between another Contracting State and beyond;
- d) there is no obligation for a Contracting State to grant cabotage traffic rights to the carrier of another party, neither is there a prohibition to grant such rights;
- e) tariffs in respect of scheduled air services, are required to be submitted for approval and are deemed to be approved if neither of the two States concerned expresses its disapproval of the tariffs within a specified period. Certain guidelines which are designed to safeguard the interests of both the carrier and the consumer and to ensure some measure of market stability, have been established for the setting of those tariffs;
- f) the Agreement provides for a fair and equal opportunity for all CARICOM air carriers to compete in the air transportation covered by the Agreement. Contracting parties are required to take account, among other factors, of the requirements of the public for transportation and any unfair competitive practices of carriers;
- g) there is no provision for the direct control of capacity on any route. However, the undesirable practice of “dumping” excessive capacity in order to force a competitor out of business can be addressed on the basis of the commitment of Contracting States to eliminate unfair competitive practices and to have as their primary objective, the provision, at a reasonable load factor, of capacity adequate to meet the current and reasonably anticipated traffic requirements;
- h) Contracting States are committed to act in conformity with the provisions of the main Conventions and Annexes to the Chicago Convention which deal with aviation security and to cooperate generally in this regard; and
- i) there is a facilitating role for the Secretary-General of the Community in matters of consultation and the settlement of disputes. The Agreement also makes specific provisions for the operation of air taxi services having regard to the demands of the tourism sector of the Community.

#### 4. ISSUES FOR CONSIDERATION

4.1 The CARICOM MASA and Chapter Six of the Revised Treaty of Chaguaramas were developed over an extended period following a process of national and regional consultations. The CARICOM MASA entered into force on 17 November 1998 and is presently in force among nine Member States. It provides a role for niche operators on low density routes and greater flexibility than previously obtained in aircraft routing and flight scheduling by the established carriers.

4.2 During the evolution of the CARICOM MASA, consideration may need to be given to the granting of concessions on specific routes where the market mechanism does not result in essential services being offered to some destinations in the Community, particularly those not served by jet airports. CARICOM may also need to consider the development of further safeguard measures to protect consumer interests in a liberalized environment and ensure that CARICOM air carriers continue to participate in regional transportation on the basis of equality of opportunity as contemplated by the Convention on International Civil Aviation to which Member States are parties. Effective measures may need to be put in place to ensure that foreign carriers

do not enjoy an unfair competitive advantage over CARICOM air carrier on intra-CARICOM routes. One proposal is that traffic originating in one CARICOM State and destined for another CARICOM State should be protected for CARICOM air carriers. (This is the new concept of "CARIBOTAGE" which is being developed and promoted). The protection of the intra-CARICOM traffic for CARICOM carriers will promote the viability of these carriers and offer them some measure of compensation for being unable to carry cabotage traffic in the vast domestic market of the foreign competitors.

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