

Response of ITALY

to questions concerning its current policy, position and practice on air carrier ownership and control

(Date of response: 27/01/04)

No.	Question	Yes	No	Case by Case	Note/Comment
1.	When designating your airline to operate the agreed services under an air services agreement, do you require it to be substantially (or majority) owned and effectively controlled by nationals of your country?				See attachment
2.	In dealing with the designation of foreign airlines, which of the following criteria do you accept:				
	a) substantially (or majority) owned and effectively controlled by the designating party or its nationals (the traditional approach)	X			
	b) substantially (or majority) owned and effectively controlled by one or more States that are parties to an agreement or within a predefined regional grouping (e.g. a “community of interest” carrier)			X	
	c) incorporated and having its principal place of business or permanent residence in the territory of the designating party		X		
	d) having its principal place of business in the territory of and effective control by the designating party (without the ownership requirement)		X		
	e) having its principal place of business in the territory of and effective regulatory control by the designating party			X	Exceptionally Hong Hong
	f) any other criteria (please describe)		X		

No.	Question	Yes	No	Case by Case	Note/Comment
3.	In dealing with airline designations in the future, are you willing to accept criteria other than the traditional national ownership and control:			X	
	a) for both yourself and the foreign partner?		X		
	b) for the foreign partner but maintain traditional criteria for yourself?	X			See attachment
	c) What economic regulatory conditions will you impose for such acceptance? (please describe)				
4.	Are you willing to consider the following positive action in facilitating liberalization of air carrier ownership and control:				
	a) issuing an individual statement of policy for accepting designations of foreign air carriers?		X		
	b) developing a common policy with partner States? (please indicate, if possible, with which partner(s))				See attachment
	c) any other action? (please describe)				
Any other comments on your answers:					

Attachment

Question 1: When designating your airline to operate the agreed services under an air services agreement, do you require it to be substantially (or majority) owned and effectively controlled by nationals of your country?

Under European Community law, Member States are required to grant equal terms of market access to any community carrier established on their territory. Community carriers must be majority-owned and controlled by European Community interests. Member States may not, therefore, require an airline to be majority-owned and controlled solely by its own nationals. However, at present, many bilateral agreement still incorporate such a restriction. The EC and its Member States will work collectively and individually with their partners to remove this restriction from bilateral agreements.

According to the EC Treaty and secondary legislation, as well as to the judgements of the European Court of Justice of 5 November 2002 on cases C-466/98, C-467/98, C-468/98, C-469/98, C-471/98, C-472/98, C-475/98 and C-476/98, a Member State of the European Union shall limit requirements to the following criteria in the designation of carriers originating from another Member State to operate the agreed services under an air services agreement:

- establishment of an airline in its territory under the Treaty establishing the European Community and has received an Operating Licence in accordance with European Community law (*); and
- effective regulatory control of the airline exercised and maintained by the European Community Member State responsible for issuing its Air Operators Certificate (**), and the relevant aeronautical authority is clearly identified in the designation.

(*) Operating Licences are ruled by Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers (*Official Journal L 240, 24/08/1992 p. 0001-0007*).

Among the necessary conditions for a carrier to be granted such License, the Regulation (article 4.2) provides that, to be granted such an Operating Licence, “*the undertaking shall be owned and continue to be owned directly or through majority ownership by Member States and/or nationals of Member States. It shall at all times be effectively controlled by such States or such nationals.*”

Effective control (article 2 (g) of the Regulation) means “*a relationship constituted by rights, contracts or any other means which, either separately or jointly and having regard to the considerations of fact or law involved, confer the possibility of directly or indirectly exercising a decisive influence on an undertaking, in particular by:*

(a) the right to use all or part of the assets of an undertaking;

(b) rights or contracts which confer a decisive influence on the composition, voting or decisions of the bodies of an undertaking or otherwise confer a decisive influence on the running of the business of the undertaking”.

(**) An AOC is “a document issued to an undertaking or a group of undertakings by the competent authorities of the Member States which affirms that the operator in question has the professional ability and organization to secure the safe operation of aircraft for the aviation activities specified in the certificate” (article 2(d) of Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers).