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REGIONAL WORKSHOP ON AIR TRANSPORT REGULATORY POLICY

(Bangkok, 30 April – 4 May 2001)

SUMMARY REPORT

INTRODUCTION

1. A regional workshop on air transport regulatory policy for States in the Asia Pacific region was held in Bangkok from 30 April to 4 May 2001. The workshop was the third of its kind in the region, the previous one having been held in Macao in September 1997. In addition, two subregional seminars on air transport regulatory policy have been held in the region, one in Fiji in January 1998 and the other in Hanoi in February 1999. These workshops and seminars provide an opportunity for States to obtain advice and information and to exchange views and experience on the economic regulation of international air transport. This workshop focused on regulatory developments and topics of particular interest to States in the region, drawing on guidance developed by ICAO and exploring possible policy options and approaches.

2. The workshop was arranged by the ICAO Regional Office, Bangkok, and was hosted by the Ministry of Transport and Communications of Thailand with organizational arrangements being made in coordination with the Department of Aviation and the Aeronautical Radio of Thailand Ltd. (AEROTHAI). AEROTHAI provided the meeting facilities. Representing His Excellency Mr. Pracha Maleenont, the Deputy Minister for Transport and Communications, Dr. Kosol Petchsuwan formally opened the workshop with a welcoming address. He noted the continuing long-term rapid growth of passenger and freight traffic in the region and the consequential need to manage this growth in order to make it sustainable and beneficial to all parties concerned. He also stressed the need for cooperation and for finding common solutions in an interrelated air transport environment. Mr Lalit B. Shah, Regional Director for the Asia Pacific region, responded on behalf of ICAO, reviewed relevant developments and activities in ICAO and drew particular attention to the recent decision of the ICAO Council to convene a fifth Air Transport Conference in March 2003. He concluded by urging active participation in the workshop proceedings by all those attending.

3. Mr Abhichata Bensubha, Senior Air Transport Expert in the Thailand Department of Aviation, chaired the meeting and Mr John Gunther, Regional Officer, Air Transport, Bangkok, served as Secretary. Mr Shaukat A. Ali, Deputy Regional Director, ICAO, Bangkok, was Adviser to the meeting.

4. A total of 122 participants attended the workshop from 25 States and administrations and two international organizations. The list of participants is contained in **Appendix A**.

5. The Agenda for the workshop was as follows:

Item 1: Introduction and overview of ICAO's role and activity in economic regulation

Item 2: The regulatory scene at the regional and global level

Item 3: Trade in services developments

Item 4: Adjusting to new regulatory trends and developments – key issues in a competitive environment.

6. The workshop conducted its discussions in English. Documentation consisted of 12 working papers and 2 information papers prepared by the Secretariat, 2 working papers submitted by Australia and 4 information papers presented by Thailand, Nepal, Cambodia and Indonesia, respectively. Additional ICAO reference documents included The Manual on the Regulation of International Air Transport (Doc 9626), Policy and Guidance Material on the Economic Regulation of International Air Transport (Doc 9587), Implications of Airline Codesharing (Circ 269) and pertinent State letters. A list of the documentation is provided at **Appendix B**.

DISCUSSION

Agenda Item 1: Introduction and overview of ICAO's role and activity in economic regulation

7. The Secretary introduced this item for which there was no specific working paper, although the reference documents and a State letter were basic to the item. He dealt initially with some administrative arrangements, emphasizing the interactive nature of the workshop. He then explained the objective, purpose and scope of the workshop as well as the workshop methodology, including the proposed use of "round table" discussions on certain items. He provided an overview of ICAO's regulatory mandate and advisory role, its structures and organizational arrangements as well as its publications, guidance and output in respect of economic regulation.

8. The Secretary then traced ICAO's development of regulatory policy guidance through a series of air transport conferences over the years and the organization's plans to convene a fifth Air Transport Conference in March 2003 on the theme "Challenges and Opportunities of Liberalization". He explained the conference's objectives and the structure of its draft agenda and drew attention to the State letter SC 5/1-01/44 sent to States on 6 April 2001. That letter advised of the decision to convene the conference, explained its structures and proposed topics, and sought the views of States on an agenda. The administrations present at the workshop were urged to provide their input to enable the Council to make a final decision on the agenda and arrangements for the conference. It was noted that many of the issues which will be considered globally by the Conference would be addressed by this workshop.

Agenda Item 2: The regulatory scene at the regional and global level

a) Overview of current global regulatory trends and developments

9. This item was introduced on the basis of two Secretariat papers, WP/2 which reviewed broader global trends that have an impact on international air transport, regulatory and industry trends in air transport and future prospects for the sector, and IP/1 which provided an update since the Worldwide Air Transport Conference in 1994 on broad trends and issues in the liberalization of international air transport. In introducing this item, the Secretary emphasized the rapidly changing air transport industry and regulatory environment, highlighting with examples the impact and consequences of global changes, particularly for regulatory authorities.

10. In the ensuing discussion, attention was drawn to the effect of corporatization and commercialization of airports and air navigation services authorities, to the instability of airline alliances, and to the regulatory implications of the concept of so called "virtual airlines". One trend not sufficiently recognized in the future evolution of air transport and its regulation was that of environmental protection. Changes in aircraft technology and passenger facilities were another trend not to be overlooked. The need for multilateral cooperation in industry-standard setting and the importance of interlining for a global air transport system were also commented upon.

b) Review of the regulatory scene involving States in the Asia and Pacific region

11. WP/3 provided information on international services in each State in the region. It contained lists of the bilateral air services agreements registered with ICAO, information on States' national airlines operating international services, including the number of international points served, passengers uplifted in 1999, fleets and alliances and codeshares with other airlines. Another Appendix provided traffic data at the top 20 international airports in the region. The information gave participants a general overview of the industry size, the extent of aviation relationships and linkages, as well as the complexities and disparities in resources, capabilities and prospects in the regional air transport scene.

12. The Secretary's introduction of this paper was followed by a "round table" of the administrations present with the intention of supplementing this information with further details on their national industry and its prospects, national regulatory perspectives and any significant airport and airline development plans. The exercise was particularly instructive and gave participants a more complete picture of the air transport capacity, problems and potential of the region. One aspect evidenced by the "round table" was the difference in a great many cases between the number of bilateral agreements declared to have been actually signed by administrations as against the number of agreements registered with ICAO pursuant to Articles 81 and 83 of the Convention on International Civil Aviation. Participants were urged to check these respective lists and to make arrangements to register those agreements not yet filed. In addition to the constitutional obligation for States to register, the filing of agreements enabled ICAO to carry out its monitoring and research functions more effectively in the regulatory policy area.

13. Several administrations present submitted in writing more detailed information of their air transport environments. The meeting duly noted the material in IP/3 from Thailand, IP/4 from Nepal, IP/5 from Cambodia and IP/6 from Indonesia.

Agenda Item 3: Trade in services developments

- a) **Briefing on recent developments, including the review of the General Agreement on Trade in Services (GATS) by the World Trade Organization**
- b) **Overview of ICAO's policy and position on trade in services negotiations**

14. Both parts of this agenda item were introduced and discussed together on the basis of WP/4 and IP/2 submitted and introduced by the Secretariat, and WPs 13 and 14 submitted and introduced by Australia. The Secretary's introduction of WP/4 included an historical background to the World Trade Organization (WTO-OMC) and to trade in services, an explanation of the trade in services principles, concepts and mechanism in the General Agreement on Trade in Services (GATS), the presently limited application of the GATS to international air transport in an Annex on Air Transport Services, and the current review of the GATS and the Annex with a view to extending the regulatory coverage of the GATS in international air transport. WP/4 and the introduction of this item also covered ICAO's long-standing involvement in the trade in services issue, its relationship with the WTO-OMC, ICAO's policy on trade in services as enunciated in Assembly and Council Resolutions and the possible negotiating options for the present review process in the WTO-OMC. IP/2 reproduced a submission by ICAO to the WTO-OMC in December 2000 regarding the role of ICAO in international air transport regulation and its current work in facilitating regulatory change.

15. WPs 13 and 14, introduced by Australia, set out that administration's views on the GATS Annex review process. They included a case for using the GATS mechanism as an alternative structure to bilateralism and regionalism for liberalizing air transport services and proposals to have the GATS coverage of air transport extended to dedicated air freight, non-scheduled air services, and air carrier ownership and control.

16. Discussion on this topic focused on the compatibility of concepts used in trade and air transport, such as reciprocity and most favoured nation (MFN); the difficulty of applying concepts like MFN to non-scheduled services (the distinction of which from scheduled operations is increasingly blurred); the difficulty of drawing a regulatory line for purposes of a GATS application when air transport of cargo is increasingly multi-modal; the effect that commitments made by one State under an expanded GATS coverage might have on its neighbouring States; the GATS suitability for addressing secondary trade barriers in air transport; and, the universal role, acceptance and responsibility of ICAO in air transport matters.

Agenda Item 4: Adjusting to new regulatory trends and developments – key issues in a competitive environment

a) Government's role and objectives in international air transport

17. The Secretary introduced this topic on the basis of WP/5, which reviewed the role of the civil aviation authority in economic regulation in terms of its traditional role, its aims, sources, coverage and governing factors, and also in light of the changing regulatory and organizational approaches to this government function. Some different policy approaches and models were examined, as were the kinds of financing, organizational, policy development and coordination and resource issues that arise when the economic regulatory role is addressed. The meeting was invited to focus discussion among participants on their national views and experience in carrying out the regulatory roles as well as the problems associated with it, especially when seeking to modify the institutional arrangements or function.

18. A number of participants described the present arrangements in their administration. The discussion also highlighted the kinds of problems that arise under existing structures and in a transition to new ones. Particular problems emerged when a move to autonomous authority was accompanied by domestic and/or international liberalization. In addition to the lack of financial and human resources, and the retention of suitable manpower for the regulatory functions, there were matters of enforcement and how to deal with commercial disputes, how to ensure adequate safety standards and equipment among start-up carriers in a liberalized environment and the need to draft AIP procedures to ensure that safety is not compromised when moving to a liberalized environment. As to internal policy coordination when the various civil aviation functions are split up, the experience of some administrations indicated that this should not be a major issue as long as respective roles are clearly defined in the respective mandates.

b) Market access, including progressive liberalization, participation and safeguards

19. This topic was considered on the basis of WP/6 and relevant parts of the two main reference documents, Doc 9626 (The Manual) and Doc 9587 (Policy and Guidance Material). WP/6 and the Secretary's introduction of market access traced the background and fundamentals of market access, traditional approaches to market access, the changing regulatory views of market access, the negotiation of market access, the advent of progressive liberalization and "open skies", and the role of ICAO in developing guidance material on the whole range of market access related issues, including safeguards and dispute resolution, participation and preferential measures.

20. Discussion brought out a number of issues including the implications of airport access for the liberalization process, the distinction between the so-called "ninth freedom" (stand-alone cabotage) and the right of establishment, ICAO's role in the dispute resolution mechanism that came out of the work of the 1994 Worldwide Air Transport Conference and Air Transport Regulation Panel, the consultation process with interested parties prior to bilateral negotiations, the distinction between safeguards under the WTO-OMC versus those used in air transport, the shortcomings of the bilateral system and the regulatory implications of franchising.

c) Regional agreements and arrangements

21. The Secretary introduced this topic on the basis of WP/7 which provided an overview of regional agreements and arrangements that have emerged in recent years. The underlying purpose of these various arrangements, which are in different stages of development, is the liberalization of air transport services among geographic groups of States. Attached to WP/7 was a table giving a comparative analysis of the main provisions of the various regional initiatives. Also attached to WP/7 were the principal items of European Union legislation that provide the basis for the European Single Aviation Market and Common Aviation Area. The Secretary explained in some detail the European single market as being a case study in regional liberalization but also because of its potential implications for States in the Asia Pacific region. Attention was drawn to two particular

elements, i.e. the European Commission's requests for a mandate for external negotiating authority as well as authority to apply community competition law to air services between an EU airport and third countries.

22. Discussion centred mainly on those current regional liberalization initiatives in Asia Pacific. Participants familiar with the specific initiatives elaborated on the following: the CLMV subregional cooperation arrangement and progressive liberalization between Cambodia, Lao PDR, Myanmar and Viet Nam; ASEAN arrangements involving Brunei Darussalam, Indonesia, Malaysia the Philippines, Singapore and Thailand in different groupings within designated growth areas; the APEC Transportation Working Group's work on the liberalization of specific aspects of market access; and the plurilateral air services agreement on "open skies" between Brunei Darussalam, Chile, New Zealand, Singapore and the United States. The meeting also noted the development within the Pacific Islands Forum of a multilateral agreement to liberalize air transport services among the island countries of that subregion.

d) Airline ownership and control

23. This topic was presented on the basis of WP/8 which approached the issue from the national perspective of limits to foreign ownership and investment in carriers and from the bilateral regulatory perspective of the traditional "substantial ownership and effective control" provision for the use of market access. The Appendix to WP/10 on Privatization included information on airline ownership. The Secretary explained the background and traditional approach to ownership and control from these two perspectives, the various exceptions to these approaches and the evolving regulatory environment, including ICAO's guidance, on alternative formulae to the "substantial ownership and effective control" provision, in order to facilitate foreign investment in national airlines. The impact of globalization and privatization had made this topic one of the more complex and important matters facing regulators in a liberalizing environment. Some policy options and regulatory responses available to States were therefore explored. The attention of the meeting was also drawn to the intention of ICAO to give this issue considerable prominence in the forthcoming air transport conference (in 2003), and administrations were urged to assist in the preparations for it by completing an ICAO questionnaire on airline ownership and control, which was about to be sent out by State letter.

24. In the discussions on this topic, many participants explained their national positions on the use of alternative formulae, such as "principal place of business", in their bilateral relations as well as their national legislative limits on ownership. This review of policies indicated a broad willingness to be pragmatic, on a case-by-case basis, about the use of alternative bilateral formulae for the designation of airlines. However, most States in the region considered their national airlines in terms of strategic assets with national development roles, and only a few had plans at this stage to open their airlines to more than a limited foreign ownership or partnership.

e) Airline cooperation and alliances, including codesharing

25. The Secretary introduced this topic on the basis of WP/9 and the ICAO Secretariat study on The Implications of Airline Codesharing (Circ 269). The presentation divided the topic into three parts, alliances in general, including global alliances, codesharing and franchising. Firstly, on alliances, the background of airline cooperation was examined, followed by the emergence of new forms of cooperation with different objectives, the various types of alliances together with their characteristics, coverage and impact, and finally the recent emergence of a handful of global alliances and their implications. The principal types of codesharing were then described, as well as their rationale, the potential benefits or disadvantages for airlines and passengers, and their regulatory treatment from the market access and consumer protection angles. ICAO's study on the subject was noted as was ICAO's guidance on the consumer aspect of codesharing. Lastly, the nature of franchising and its regulatory implications were explained. WP/9 included a case study of the alliances experience of Singapore Airlines, which was duly noted.

26. In the discussion on this topic, reference was made to the use of management contracts in alliances, particularly where some equity is involved, the policy options for small national airlines in the alliance phenomenon, the differing perspectives on alliances of airlines and regulators, and the question of potential hub dominance by global alliances.

f) Airline product distribution (including CRS, Internet and Electronic-ticketing)

27. This topic was introduced by the Secretary on the basis of a presentation only, as there was no specific working paper. The presentation gave an overview of the rapidly changing product distribution scene, its structures and the impact of information technology, particularly the Internet, as a marketing and selling tool. The regulatory issues that arise out of the evolving airline product distribution system were also covered, including the various codes of conduct developed by ICAO, regional bodies and some national authorities

28. In the context of this topic, the representative of the International Air Transport Association (IATA) gave a comprehensive presentation on IATA's role and activities in multilateral tariff coordination, placing emphasis on the interlining link with pricing of the airline product. The presentation also dealt with the factors underlying airline pricing and the governments role in tariff approval. The subsequent discussion brought up questions of overbooking and "no shows", IATA Tariff Coordinating Conference voting procedures and the antitrust treatment of this IATA activity.

g) Other regulatory issues

i) Privatization

29. This topic was presented on the basis of WP/10. That paper included a case study of the privatization experience of Malaysia Airlines and also contained an Appendix listing the information on airlines, by region, which are owned by States or have been partially or fully privatized since 1985. The paper and the presentation by the Secretary explained the background to airline privatization, the reasons why a State might wish to privatize its airline, some practical information on preparing for a privatization and the implications for the governments's policy role of an airline privatization. More than half the international airlines in the region remain 100 per cent under government ownership, although there are currently plans in a number of States to sell off varying parts, up to 49 per cent, of the national carrier.

30. Some participants informed the meeting of privatization experiences in their States. Comments were also made regarding the speed of the privatization process, ownership and control concerns when there are many small investors, and the retrenchment of airline staff. Airport privatization, the licensing of airports and the continuing obligations of States under the Chicago Convention when airports are privatized were also discussed.

ii) Leasing of aircraft

31. The leasing of aircraft was considered on the basis of WP/11 which contained a Secretariat study on this subject completed in 1999. The Secretary highlighted the main features of the study including the nature, extent and impact of wet and dry leasing in international air transport, the safety and bilateral regulatory issues posed by aircraft leasing, and policy approaches taken towards leasing in certain regions and States. The Secretary drew particular attention to the additional material provided in the study regarding Article 83 bis, namely the guidelines on the implementation of this provision (that is, agreements on the transfer of responsibilities pursuant to Art 83 bis), a model agreement and a list of parties to the Convention amendment. Several participants informed the meeting of the approaches towards leasing taken by their administrations.

iii) Slot allocation

32. Slot allocation was introduced on the basis of WP/12 containing a Secretariat study on The Regulatory Implications of the Allocation of Flight Departure and Arrival Slots at International Airports, originally presented to the ICAO Conference on the Economics of Airports and Air Navigation Services (ANSCConf2000) held in Montreal in June 2000. The study, which has recently been distributed as an ICAO document (Circ 283), took into account consideration of its conclusions by the Conference as well as certain recent developments in this subject. The Secretary summarized the salient points of the study including a description of the slot allocation issue, the multilateral (IATA), regional (European Union) and national (USA) systems for slot allocation presently in existence, and addressed some of the measures proposed in the study for possible improvements in these existing systems.

iv) Taxation

33. The Secretary made a brief presentation on ICAO's policies on taxation as set out in Doc 8632, ICAO's Policies on Taxation in the Field of International Air Transport. He noted in particular the treatment of the issue by the 1994 Worldwide Air Transport Conference, the content and rationale for ICAO's policies and the distinction between these policies and the Organization's policies on airport and air navigation charges.

v) Environmental protection

34. A brief presentation was made by the Secretary on the Organization's activities on environmental protection, the technical and economic regulatory framework covering noise and engine emissions, including their treatment at the technical level within ICAO by Annex 16 and the organization's policies on emission charges found in Council and Assembly resolutions.

CLOSING

35. Prior to the conclusion of the workshop, participants were requested to complete evaluation questionnaires seeking their comments and assessments of the workshop and the documentation. At the closing of the workshop participants from administrations were presented with Certificates of Attendance. Several participants expressed appreciation to the ICAO Secretariat for the coverage, and the quality of the workshop and its documentation, to the Chairman for his conduct of the meeting and to the organizers from various agencies of the government of Thailand for the excellent facilities and hospitality provided. The Secretary thanked participants for their contributions, interest and involvement. The Deputy Regional Director, Mr. Ali, also paid tribute to participants for their support of this workshop and of ICAO's air transport activities in general and hoped that participants had found the workshop to be useful. He also thanked all the agencies involved for their support to ICAO and to the participants and for the facilities and hospitality, specifically the Ministry of Transport and Communications, the Department of Aviation, the Aeronautical Radio of Thailand (AEROTHAI) and THAI Airways International. Finally, the Chairman, in formally closing the workshop, congratulated all concerned with the preparation, organization and conduct of the workshop.

APPENDIX A

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APPENDIX B

LIST OF DOCUMENTATION

A. WORKING PAPERS

RPW - WP/1	Agenda
RPW - WP/2	Overview of Regulatory Trends and Developments
RPW - WP/3	Air Transport in the Asia/Pacific Region
RPW - WP/4	The General Agreement on Trade in Service (GATS) and International Air Transport
RPW - WP/5	Role of the Civil Aviation Authority in Economic Regulation
RPW - WP/6	Air Transport Market Access
RPW - WP/7	Regional Air Service Agreements and Arrangements
RPW - WP/8	Airline Ownership and Control
RPW - WP/9	Airline Cooperation and Alliances
RPW - WP/10	Airline Privatization
RPW - WP/11	Leasing of Aircraft
RPW - WP/12	Slot Allocation
RPW - WP/13	The Mandated Review of the GATS Annex on Air Transport Services (Australia)
RPW - WP/14	The GATS Review: An Opportunity for Phased Reform of Air Transport Services (Australia)

B. ICAO PUBLICATIONS

Doc 8632	ICAO's Policies on Taxation in the Field of International Air Transport
Doc 9587	Policy and Guidance Material on the Economic Regulation of International Air Transport
Doc 9626	Manual of the Regulation of International Air Transport
Circ. 269	Implications of Airlines Codesharing

C. STATE LETTERS

SP 38/4.1-98/5	List of Air Transport Experts for Mediation or Dispute Resolution
SP 38/4.1-99/53	List of Air Transport Experts for Mediation or Dispute Resolution
E 3/10-00/7	Council Resolution on Trade in Services Negotiations
SA 33/1-00/105	Invitation to attend the 33rd Session of the Assembly, from 25 September to 5 October 2001, and Provisional Agenda
SC 5/1-01/44	Worldwide Air Transport Conference

D. INFORMATION PAPERS

RPW - IP/1	Trends and Issues in the Liberalization of Air Transport
RPW - IP/2	ICAO'S Role in Facilitating Air Transport Liberalization
RPW - IP/3	Angel Airlines – Thailand
RPW - IP/4	Overview of Civil Aviation Policy and Regulation in Nepal
RPW - IP/5	Overview of Civil Aviation Policy, Regulatory and Development Strategy in Cambodia
RPW - IP/6	Indonesian Civil Aviation Policy Toward Air Services Liberalization