

REGULATORY POLICY SEMINAR ON “LIBERALIZATION POLICY AND IMPLEMENTATION”

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JAMAICA’S EXPERIENCE WITH AIR TRANSPORT LIBERALIZATION

INTRODUCTION

Today, the forces of globalization have posed significant challenges for airlines as the world moves towards greater liberalization of the world economy. With the emergence of powerful trading blocks such as the European Union, the North American Free Trade Association and by extension, the Free Trade Area of the Americas as well other regional economic groupings, there has been an increasing reliance on international air transport as an instrument of economic and social development particularly in developing countries. Within the Caribbean Community, plans are well-advanced with respect to the establishment of the Caricom Single Market and Economy which is expected to come into effect by the end of 2005.

Within this new political and economic landscape, there is the increased threat of marginalization of developing states. Therefore, in order to protect the interests of developing states such as Jamaica, there must be the establishment of safeguards and safety nets in the aviation industry so as to enable national

airlines to have sustained participation in international air transportation and to have access to the global market place.

Jamaica's Experience

Jamaica has always taken a pragmatic approach to the liberalization of Air Transport Services. It is of the opinion that liberalization, *inter alia*:

- Facilitates the expansion of international air transport opportunities for airlines.
- Promotes an international aviation system based on fair competition and commercial considerations in the market place with the minimum degree of government interference and regulation consistent with fair competition
- Allows airlines to offer to the public a variety of service options at the lowest prices.

Nevertheless, countries and in particular small developing countries need to examine carefully the implications of embarking on a fully liberalized regime as there are disadvantages, the most significant being that of becoming uncompetitive when faced with competition from larger countries operating many carriers.

The fact is that liberalization will gain acceptance only if it is based on fair and equal opportunity for all states to compete on a level playing field. The reality however is, there are great disparities in:

- The size of countries
- The level of economic development
- Technology,
- Financial resources
- The size of airlines.

All these issues must be considered and addressed if air transport liberalization is to be accepted by developing countries as a fair system which will support their objectives of participating in international air transport.

Jamaica's negotiating position is influenced by its interest in initiating or expanding services to countries and the challenges posed in achieving these objectives. Since varying factors obtain in each country, its decision on whether to enter into a liberalized agreement will depend on these factors.

In its deliberation on the pace and degree of liberalizing the air transport sector, Jamaica is concerned with reconciling the opportunities for expansion on one hand and the competitive position between airlines on the other, having regard to the disparity in the size and number of Jamaica's airlines.

Countries must be selective in opening up as:

- Full liberalization is best suited for large markets which can support competition
- Limited market and thin routes are not candidates for liberalization.

Air Transport Agreements

Jamaica has concluded Air Transport Agreements with eleven (11) European countries including Germany, Russia, Belgium, Sweden and the Netherlands. Most of these bilateral agreements have been concluded under the traditional approach and an examination of these agreements shows restrictions on designation, market access, tariffs and no inclusion of code share arrangements. These agreements were concluded with the expectation that carriers would commence operations in the near future and stimulate growth in these markets; however this expectation has not materialized. More recently, multilateral agreements have also been concluded among Caricom states as well by states which are members of the Association of Caribbean States (ACS).

Jamaica commenced consultations with a number of countries including Cuba, Panama, Venezuela, Canada and the United Kingdom (UK) in the 1990's with the main objective of liberalizing specific areas of the existing air transport agreements signed with Jamaica.

In the case of the UK, arising out of consultative meetings between the Governments of Jamaica and the UK, there has been some measure of “opening up” in areas such as:

- The removal of all restrictions on services between Jamaica and UK points with the exception of Heathrow and Gatwick, thereby facilitating the expansion of Jamaica's operations to the UK;
- An increase in the number of fifth freedom rights beyond the UK creating new opportunities for Jamaican carrier to operate beyond the UK to additional European points;
- The introduction of liberal code-share rights whereby only the carrier operating the route needs to have the appropriate route rights; generally, both carriers are required to have the underlying traffic rights.

Recently, the UK has requested the reopening of talks with Jamaica and has indicated its desire to conclude a liberal agreement.

The UK is however, proposing a fundamental change to the significant matter of designation with the introduction of the new criterion, that of Community of Air Carriers. This is as a result of a ruling of the European Court of Justice on November 5, 2002 whereby the Nationality Clause which has been a criterion for

designation now violates the right of Community Members under the Right of Establishment Rules under the EU Treaty.

Jamaica in its negotiations with the UK is therefore being asked to treat the EU as one domestic aviation market place and to accept the principle that any airline which has an establishment in a member state is entitled to the route rights of that member state.

This new ruling has significant implications for Jamaica. It raises fundamental questions such as –

- Will fifth freedom rights which have been negotiated and agreed on with European countries which are now members of the EU be regarded as cabotage rights?
- What will be the competitive position of Jamaican carriers and in particular Air Jamaica, when pitted against many EU carriers which will now have the right to operate on the two- (2) routes presently being operated by Air Jamaica?

These issues are presently being examined and it is hoped that a liberal air services agreement will eventually be concluded with the UK that will be consistent with the objectives of Jamaica's aviation policy.

Jamaica's experience with US/JCA Open Skies Agreement

The US is the only country with which Jamaica has concluded a truly liberalized agreement. This Liberalization started in 1978 with the conclusion of a liberal Air Transport Agreement by means of a Protocol to the Air Transport Agreement of 1969 between USA and Jamaica.

It was an act of faith; but Jamaica at that time, was of the opinion that the development of air transport would be greatly facilitated, if such developments took place within a competitive environment, in which the airlines would be given a large measure of freedom in the conduct of their operations by the removal of many restrictions which previously existed.

In 1979, the liberal agreement reached between the Governments of Jamaica and the USA was a significant step in the direction of an Open Skies Agreement and was motivated by –

- The proximity of Jamaica to the USA
- The potential of an extensive market which was capable of being exploited and
- A large market which could support competition.

Like most Caribbean/Latin American countries, the US is a major tourist market and for countries like Jamaica whose economy is highly dependent on tourism, this market is central to our aviation policy.

It was the hope of Jamaica at that time, that many US carriers would operate services from a wide number of points in the US to Jamaica, providing the desired growth in seats and traffic to Jamaica.

The relative disadvantage of this Agreement was seen in the context of the fact that whereas US carriers could serve from any point in the US, Jamaican carriers were confined to serve only ten points albeit with the flexibility to change these points or add new points on six months notice. In 2002, the conclusion of the Open Skies Agreement conceded to Jamaica the right to serve any point without restriction.

By then Jamaica had over 20 years experience in operating in a fairly liberalized regime and while there were no extensive operations by US carriers (with the exception of the period following deregulation in the USA when a number of new carriers emerged and then disappeared), Air Jamaica has increased the number of points served from 4 gateway points in 1979 to 12 gateways points across the United States by 2002.

During this period, 1979 to 2002, the USA/JCA market also increased significantly from 450,000 to 1.2 million passenger arrivals, averaging a 12% increase annually. At the same time Air Jamaica has maintained its competitiveness and accounts for the highest market share for a single carrier.

The provision of the Open Skies Agreement of 2002 did not represent a substantial advance on the 1979 Agreement and essentially repeated many of the provisions of that agreement in respect of such provisions as –

- Multiple designations – that is the right of each party to designate as many carriers as it wishes for the purpose of exercising the traffic rights granted by the Agreement as long as the carriers were substantially owned and effectively controlled by nationals of the designated party.
- Fair competition: Fair and equal opportunity for the airlines of each party to compete in providing air transportation to be determined by commercial considerations only and with unrestricted capacity and frequency on all routes.
- Commercial opportunities: the right to establish offices in the territory of the other party for the promotion and sale of air transportation and to bring in and maintain in the territory of the other party management, technical operational

expertise and other specialist staff required for the provision of air transportation; and the right of airlines to perform their ground handling.

- Pricing: the application of the rule of double disapproval and the establishment of prices by each designated airline based primarily on commercial considerations in the market place.

It was a fairly liberal regime with no restrictions on designations, route rights, capacity, frequency or pricing.

In light of this very liberal regime the Open Skies Agreement of 2002 did not represent a quantum leap with the exception that it: -

- Provided expanded opportunities to Jamaican carriers to serve not only 10 points but all points in the US.
- It provided the full liberalization of all-cargo operations.
- It provided for broad code-sharing opportunities thereby enabling cooperative market arrangements to facilitate market expansion.

The inclusion of a liberal Air-Cargo Regime was an important element supporting the Government of Jamaica's policy to develop in the near future, an airport (including a general aviation facility) primarily for air cargo operations. It will allow for inter-modal cargo services to be offered at a single through-price for the air and surface transportation combined. It allows cooperation arrangements

such as code-sharing, blocked space and has no restrictions on capacity frequency or market access.

Are there any concerns with Jamaica's liberal agreement with the US?

Code-share Experience

As we are aware, code-sharing offers the possibility to service "thin" routes at minimal cost; therefore it facilitates increased participation in international air transport by developing countries.

Presently, Jamaica's experience as regards code-share is limited to only one arrangement which exists between Air Jamaica and the US carrier, Delta Airlines and has proved to be a positive experience as Jamaica has been able to expand its market reach to points which it would not otherwise have been able to access.

However, a new operating environment is emerging; major US carriers operating in Jamaica, are pursuing code share arrangements between themselves, and are thereby strengthening their market position relative to any single code-share arrangement.

It has been recognized that global alliances are controlling a significant share of all scheduled traffic and that this trend may have negative implications for airlines which are not part of these alliances.

Similarly for Jamaica, this trend in code-sharing could lead to the erosion of traffic on the Jamaica/Delta routes which have been developed and are sustained through feeder traffic generated by this code share arrangement. Recently, the national airline Air Jamaica has seen a slippage in its share of connecting traffic. If this trend continues, Air Jamaica might eventually be forced to withdraw from these routes.

It is worthy to note that Continental and US Airways have decided not to renew their joint fare arrangement with Air Jamaica - a marketing arrangement which uses pricing to facilitate sales for Air Jamaica to points beyond its US gateway on the services of Continental and US Airways.

The question is – will this move towards multiple code-sharing arrangements between these large US airlines impact Air Jamaica's ability to remain competitive in these markets.

Conclusion

Jamaica will continue its movement towards liberalization, determining its own path and at its own pace (but with an open and consultative approach) while being flexible. It remains cognizant of the fact that each state presents different issues and that liberalization will not be adopted on an uninformed basis, but its outlook will continue to be influenced by its conviction that liberalization:

- Must be carried out in a manner which will ensure the continued and sustained participation of its airlines in international air transport
- That will ensure that its airlines operate in an environment of fair and not free competition – that its airlines will not be marginalized.

The country will always assess the risks, opportunities and potential benefits that will arise from any decision to liberalize. It cannot afford to do otherwise – Air Transport is a strategic sector of the Jamaican economy and must be assured at all times.