



RPS (Port-of-Spain)

International Civil Aviation Organization

**SEMINAR ON
AIR TRANSPORT REGULATORY POLICY**

“Liberalization Policy and Implementation”

Port-of-Spain, 27 – 29 April 2004

REPORT

TABLE OF CONTENTS

	Page
INTRODUCTION	1
Agenda Item 1 Regulatory overview – global and regional	2
Agenda Item 2 Outcome of ATConf/5 and key regulatory issues	2
Agenda Item 3 Regional liberalization perspectives and experiences	3
Agenda Item 4 National liberalization perspectives and experiences	3
Agenda Item 5 Use of the Template Air Services Agreements (TASAs) as liberalization tools	4
Closing formalities	5
APPENDIX A List of Participants	6
APPENDIX B List of Documentation	15

REGULATORY POLICY SEMINAR ON “LIBERALIZATION POLICY AND IMPLEMENTATION”

(Port-of-Spain, Trinidad and Tobago, 27-29 April 2004)

SUMMARY REPORT

INTRODUCTION

1. A regulatory policy seminar with the theme, “Liberalization Policy and Implementation” was held in Port-of-Spain from 27 to 29 April 2004. The seminar was hosted by the National Civil Aviation Authority (NCAA) of Trinidad and Tobago. Mr. Ramesh Lutchmedial, Director General of Civil Aviation, opened the seminar. The opening session was addressed by Mr. Franklin Khan, Minister of Transport and Works, Major General Ralph Brown, Chairman of the Board (NCAA) and Mr. John Gunther, Chief, Economic Policy Section, representing ICAO.

2. The meeting elected Mr. Lutchmedial as Chairman of the seminar and Mr. Agustin Vrolijk (Aruba (the Netherlands)) as Vice-Chairman. Mr. John Gunther, ICAO, served as Secretary of the meeting assisted by Mr. Luis Fonseca, ICAO’s Regional Air Transport Officer for the Americas.

3. The meeting noted that this was the second ICAO regional seminar following the fifth Worldwide Air Transport Conference (ATConf/5). The interest and theme of that Conference, “Challenges and Opportunities of Liberalization”, had been to focus on the practical aspects of liberalization. Accordingly, as a follow-up to the outcome of the Conference, this seminar was directed at the implementation aspects of liberalization, in particular through the exchange of advice and experience. In order to obtain and share a wide cross section of such experiences, additional presentations were invited from a number of organizations and States.

4. A total of 40 participants attended the seminar from 13 States and 3 international organizations. One State, Antigua and Barbuda, represented the Organization of Eastern Caribbean States (OECS) group which includes 4 other Contracting States. A list of participants is contained in Appendix A.

5. The seminar conducted its discussions in English and Spanish. Several ICAO publications, referred to in the letter of invitation but not distributed at the meeting, provided background documentation: *Policy and Guidance Material on the Regulation of International Air Transport* (Doc 9587), *Manual on the Regulation of International Air Transport, Provisional Second Edition* (Doc 9626), and the *Report of the Worldwide Air Transport Conference* (Doc 9819). In addition, 11 working papers covering the agenda items were prepared by the Secretariat. Several of the presentations by organizations and States were distributed to participants in hard copy. These Secretariat papers and copies of presentations will also be posted on the seminar web page, accessible through the ICAO website www.icao.int. A list of the documentation is provided in Appendix B.

6. The Agenda for the seminar was as follows:

1. Regulatory overview – global and regional
2. Outcome of ATConf/5 and key regulatory issues
3. Regional liberalization perspectives and experiences
4. National liberalization perspectives and experiences
5. Use of the Template Air Services Agreements (TASAs) as liberalization tools.

DISCUSSION

Agenda Item 1: Regulatory overview – global and regional

7. Consideration of this item was based on two Secretariat papers, WPs 2 and 3 and presentations by the Secretariat. The papers and presentations covered broader global trends that have an impact on international air transport, global and regional industry and regulatory developments in recent years, as well as the future prospects for international air transport. In this context, WP/3 included an Appendix summarising air transport links in terms of services actually operated as well as bilateral air services negotiated by States both within and outside the sub-region. From this information, States were requested to follow-up within their administrations to ensure that all outstanding bilateral agreements, identified by the material attached to WP/3, are filed with ICAO, as required by Article 83 of the Chicago Convention.

8. One of the Secretariat presentations also drew attention to a study currently underway within ICAO on the implications of liberalization for safety and security. This study had been called for by ATConf/5. It seeks to clarify “the definition of a State or States responsible for safety and security oversight.” As an initial step, the study will seek to identify any practices or activities brought about as a consequence of liberalization that might have implications for safety and security responsibility in the ICAO Standards and Recommended Practices (SARPs) or guidance. In the discussion which followed, the meeting addressed the problems associated with new start-up airlines in the sub-region wanting to rely initially on wet leased equipment. Where such operations involved the United States (US), it was necessary to ensure such equipment was leased from a Category I or US-based lessor. Ensuring safety and security by the State of the operator in wet lease situations like this raised particular regulatory concerns because of the obligations of the State of the operator under Annex 6.

Agenda Item 2: Outcome of ATConf/5 and key regulatory issues

9. The Secretariat made presentations on the outcome and results of ATConf/5 and on several key regulatory issues of interest or concern for States in the sub-region. Presentations covered air carrier ownership and control (also addressed in WP/4), competition laws (WP/5), consumer interests (WP/6), franchising (WP/7) and the Essential Air Services concept (WP/8). Each of these issues had been dealt with by ATConf/5. In the case of the Essential Air Services concept, the meeting noted that ICAO was currently conducting a study as one of the follow-up actions from the Conference. The study would examine whether and in what way this domestically-developed concept could be applied to the international, particularly bilateral, context. The concept had been raised at the Conference in connection with sustainability and assurance of service and the study would look at its applicability also to tourism route development.

10. In the general discussion which followed, a number of points were addressed including: the regulatory distinction between codesharing and franchising; recognising and reconciling the interests of the industry and consumers; the Latin American Civil Aviation Commission’s code of conduct for consumers; the need to treat consumers without differentiation between regions and ICAO’s possible role in this issue; the contractual nature of consumers’ rights; Trinidad and Tobago’s experience with subsidizing domestic carriers on a route where cabotage rights were being exercised by other foreign airlines; the Caribbean Community’s (CARICOM) revised treaty objectives of a single economic space and non-discrimination for CARICOM nationals; the experiences of Aruba with so called “grand” or “high” cabotage; the OECS group of States’ experience with cabotage with such partners as the US and European Union (EU) States; and strategic objectives regarding designation and ownership and control provisions when negotiating in future with EU States.

Agenda Item 3: Regional liberalization and perspectives and experiences

11. Several presentations were made under this agenda item. The Secretary introduced WP/9 which provided information including a comparative table on regional liberalization agreements and arrangements. The Secretary then made a presentation on the European Commission's new negotiating mandate for air services agreements.

12. **Latin American Civil Aviation Commission (LACAC)** next made a presentation on its proposed integration process in the region, including the methodology and coordination necessary to achieve the objectives of increased regional growth and liberalization.

13. **The Association of Caribbean States (ACS)** presented the Air Transport Agreement among the Member States and Associate Members of the Association of Caribbean States. The agreement had been negotiated over a period of four years and was now open for signature and ratification. Although not yet in force, it had seven signatures and one ratification thus far; nine were required for it to enter into force. The presentation explained the background, including its original draft as an "open skies" project, its objectives and the final content of the draft agreement. It was noted that political will was required to give effect to the agreement and achieve its purpose of improved services within the sub-region and the promotion of sustainable development. In the discussion which followed, concerns were expressed about the delay in obtaining the required number of ratifications.

14. Finally, the **CARICOM** Secretariat made a presentation on the revised CARICOM treaty of 2001 and the CARICOM Multilateral Air Services Agreement (CMASA), which entered into force in 1998 and has nine member States party to it. The presentation explained some of the revised treaty objectives, principles, plans for further institution building and CARICOM's programme for the removal of restrictions in the transport sector. Among the objectives was the removal of restrictions in transport arrangements among member States. The CMASA, which predates the revised treaty obligations and objectives, provides a regulatory framework for air services among its members. However, the agreement was considered to be more restrictive than the draft ACS agreement. This difference is likely to provide the pretext for reexamining the CMASA in light of the revised treaty principles and objectives. An ongoing CARICOM project was the possibility of an "open skies" agreement between CARICOM States and the US.

Agenda Item 4: National liberalization perspectives and experiences

15. This item was considered on the basis of a number of presentations on national experiences with liberalization. Attention was also drawn by WP/11 to the ICAO website, which already included in a "databases" folder, 27 case studies on liberalization either developed by the ICAO Secretariat or submitted by States or organizations. The liberalization experiences presented at this seminar would, where possible, be posted in the case studies database. The following presentations on national experiences were made:

15.1 **Barbados** focussed its presentation on ownership and control, market access and pricing. It referred to Barbados' mixed success with liberalization, and in particular, to its relations with several of its principal markets, the US, EU, Canada and intra-Caribbean. Non-acceptance of the "Community of Interest" principle by some of its major bilateral partners had created certain problems for Barbados in terms of competition and pricing. Where the principle had been accepted in practice, pricing and levels of service had generally benefited. Because of its experience with barriers to market access and effective competition, Barbados felt the need to continue to retain some control over pricing.

15.2 **Colombia** made a presentation explaining the circumstances and policy initiatives in Colombia in recent years in order to rationalize the number of operators, improve market supply of services

and competition while taking consumer protection into account. The approach by Colombia did not rely solely on market forces to attain national objectives.

15.3 **Costa Rica's** presentation dealt with its experience involving two liberalized partnerships, with the US and Chile. It explained the route access and traffic rights issues in each case, Costa Rica's view on reciprocity and pointed to the generally positive result in passenger traffic and fares, arising from its experience with liberalization. Amendment of its civil aviation legislative and infrastructure expansion were two of the consequences of Costa Rica's approach to liberalization.

15.4 **Cuba's** presentation explained its policies on liberalization and, in particular, its pragmatic approach to certain elements of liberalization, such as fair and equal competition, market access and codesharing. Cuba based its flexible approach to liberalization on ICAO guidance and this had led to positive results. As in the case of Cost Rica, the policy approaches had necessitated legislative changes.

15.5 **Dominican Republic**, in a presentation, informed the meeting of its recent initiatives, including legislative amendments needed to support its aviation development and expansion of access opportunities to the market. The Dominican Republic had convened hearings of the airline industry, examined its rules regarding subsidization and support to its own carriers and had amended its rules to enable start-up airlines to operate in its main market, the US, using wet leased aircraft either from the US or other Category I States. This was necessary because the Dominican Republic was itself still a Category II State, as regards US operations.

15.6 **Jamaica's** presentation gave a detailed examination of its policy towards liberalization and the rationale behind it. Jamaica saw air transport as essential and a catalyst for economic growth and development. As a tourism destination, Jamaica wished its national airline to maintain an effective and sustainable competitive position in its main markets. Jamaica had more than 20 years ago negotiated a liberalized agreement with the US. More recently, in 2003, it had renegotiated with the US to reach an "open skies" agreement, an agreement which eliminated the earlier agreement's limits on Jamaica's market access in the US. Jamaica had also sought more liberalized and flexible agreements with other partners since the 1990s. In general, it had taken a pragmatic approach to liberalization. However, in view of the open codesharing now made possible in its US "open skies" agreement, the use of hubs and codesharing among US carriers had added a new dimension to the competitive landscape and Jamaica would be monitoring closely the competitive implications for their effect on Air Jamaica in some of its US markets.

16. In the ensuing general discussion, the possibility was mentioned of LACAC developing a strategy whereby one Latin American State would be able to designate another Latin American State's airline in future relations with EU States, in view of the impending use of the community designation provision by those States. Reference was also made to the objective of multilateral agreements or agreements between blocs of States; Trinidad and Tobago's liberalized current relationship with the US; the question of treaty precedence when there are overlapping liberalized agreements; cabotage with the CARICOM group of States; and equity and airline sustainability in relationships where there are major disparities between the partners.

Agenda Item 5: Use of the Template Air Services Agreements (TASAs) as liberalization tools

17. The Secretariat made a presentation on the TASAs covering their background, the approach used, structure and format, the ATConf/5 review of them and future plans. The meeting was also informed that a State letter from ICAO (SC 5/6-04/23 dated 30 April 2004) accompanied by two CD-ROMs, would be dispatched to Contracting States at the end of April. One of the CD-ROMs titled, "ICAO Template Air Services Agreements", would include both TASAs, one for bilateral and the other for regional/plurilateral situations, in all working languages of the Organization. The CD-ROM also included a simple word search engine and the MS-Word version of the bilateral TASA, including the three approaches of traditional,

transitional and full liberalization. The MS-Word version would enable users, such as air service agreement negotiators, to download, cut and paste and customise the approaches and wording to their particular needs and circumstances.

18. The second CD-ROM to accompany the State letter was titled, "Database of the World's Air Services Agreements (WASA)". This CD-ROM contained the database including the codified summaries of the main provisions of bilateral air services agreements filed with ICAO. It included software specially developed to query and carry out analysis of the database. A user guide as well as explanatory notes in five working languages gave more details on the use of the database including descriptions of the provisions. The database itself and the user guide were in English only. The CD-ROM replaced a previous ICAO publication, *Digest of Bilateral Air Transport Agreements* (Doc 9511). The Secretariat's presentation included a demonstration of how to query the database for information, with examples of the capabilities of the built-in query mechanism. Together, the two CD-ROMs from ICAO provided national officials and other users with a package of practical tools to assist them in their regulatory responsibilities and to facilitate the liberalization process. The Secretary invited comments and feedback on these products from national authorities.

CLOSING FORMALITIES

19. At the conclusion of the seminar participants received certificates of attendance. In closing comments, certain participants pointed to the value of the seminar in giving a global perspective as well as that of other regions, felt that it had enabled participants to share information and experiences and also that it pointed to the need for the region to keep up in a globalized environment. The hope was also expressed for more such meetings. The Secretary, in closing remarks, thanked the host State for the excellent support and arrangements, and participants for their involvement in the constructive discussions. The Chairman, in formally closing the seminar, pointed to the valuable experiences exchanged, and expressed the hope that it would help participants in their future work.

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APPENDIX A

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APPENDIX B

LIST OF ICAO DOCUMENTATION

A. WORKING PAPERS

RPS - WP/1	Agenda
RPS - WP/2	Global Trends
RPS - WP/3	Regulatory Overview — Global and Regional
RPS - WP/4	Key Issues in Liberalizing Air Carrier Ownership and Control
RPS - WP/5	Competition Laws at National and Regional Levels
RPS - WP/6	Consumer Interests
RPS - WP/7	Airline Franchising
RPS - WP/8	The Essential Air Services Concept
RPS - WP/9	Liberalization at the Regional Level
RPS - WP/10	European Commission Negotiating Mandate

B. ICAO PUBLICATIONS

Doc 9587	Policy and Guidance Material on the Regulation of International Air Transport
Doc 9626	Manual on the Regulation of International Air Transport, Provisional Second Edition
Doc 9819	Report of the Worldwide Air Transport Conference (ATConf/5, 2003)

C. STATE LETTERS

SC 5/6-03/89	Case studies on liberalization experiences
SC 5/6-03/88	States' policies, positions and practices on air carrier ownership and control
SP 38/4.1-03/90	Dispute resolution mechanism and the list of experts for mediation on dispute resolution

D. SEMINAR PRESENTATIONS

The Association of Caribbean States (ACS)	Liberalization Policy and Implementation
Barbados	Perspectives and experiences of the liberalization of airline ownership and control and pricing
The Caribbean Community (CARICOM)	Liberalization of air transport services within the Caribbean Community
Colombia*	Crisis en la industria aérea Colombiana – Evolución de la política sobre acceso al mercado aéreo nacional
Costa Rica*	Experiencia del Proceso de Liberalización en Costa Rica
Cuba	Nota presentada por Cuba sobre sus experiencias en materia de transporte aéreo, en el camino de la liberalización
Dominican Republic*	Antecedentes y experiencias de la liberalización de los servicios de transporte aéreo
LACAC	Antecedentes y experiencias de la liberalización en América Latina

*Spanish only