

**WORLDWIDE AIR TRANSPORT CONFERENCE: CHALLENGES AND
OPPORTUNITIES OF LIBERALIZATION**

Montreal, 24 to 29 March 2003

- Agenda Item 3: Review of template air services agreement**
3.1: Comprehensive template air services agreement

**TEMPLATE AIR SERVICES AGREEMENTS FOR
BILATERAL, REGIONAL OR PLURILATERAL LIBERALIZATION**

(Presented by the Secretariat)

This Addendum to WP/17 presents, as Attachment B, the Template Air Services Agreement (TASA) for use in a regional or plurilateral situation.

ATTACHMENT B
REGIONAL OR PLURILATERAL TEMPLATE AIR SERVICES
AGREEMENT

As indicated in ATConf/5-WP/17, while most of the provisions contained in Attachment A, the Bilateral Template Air Services Agreement (TASA), can be adapted for regional or plurilateral use, requiring minor or no changes to the content and explanatory notes, there remains however a number of important issues that are specific to regional or plurilateral agreements and which either require substantial changes to the bilateral provision or have no counterpart in bilateral agreements.

The table below, in **Column 1**, Part I, lists the articles and annexes which appear in the Bilateral TASA in Attachment A, and in Columns 2 through 4 identifies whether and what changes are necessary for the regional or plurilateral situation.

Column 2 indicates articles and one annex in the Bilateral TASA which contain provisions that use the terminology “each designated airline”, “a designated airline of each Party” or a similar formulation. Such provisions can be used in a regional or plurilateral agreement without any changes required to the text and therefore are not included in this Attachment B and may be found in Attachment A.

Column 3 includes several articles and one annex in the Bilateral TASA which can be amended using appropriate wording to enable its use in a regional or plurilateral agreement. For example, wordings such as “the other Party”, “one Party”, “another Party” can be changed to “each Party”, “any Party”, and “every other Party”. Also, terms such as “neither Party” and “either Party” can be changed to “no Party” and “any Party” respectively. These articles and annex, also found in Attachment A and not reproduced in Attachment B, can therefore be readily amended.

Column 4 reflects the articles and annex that are new or rewritten in order to be adapted to a regional or plurilateral situation. Column 4 includes articles in the regional or plurilateral TASA that have no counterpart in Attachment A and are listed as Part II of Column 1. All such provisions are covered in Attachment B, including the different options, approaches (Traditional*, Transitional and Full liberalization) and explanatory notes. Attachment B accordingly includes only those provisions that are substantially different or new in a regional or plurilateral context, other provisions being readily adaptable from the Bilateral TASA as indicated by identification in Column 2 or 3. The format of Attachment B is the same as the Bilateral TASA in Attachment A.

* Note

“Traditional” in the context of regional or plurilateral agreements is not a reflection of States’ practice or usage over time but rather of an approach of stricter control as compared with full liberalization.

Column 1	Column 2 (no change necessary)	Column 3 (Party designation change only)	Column 4 (rewrite or addition required)
Part I - Articles in Attachment A **			
Preamble	x		
Art. 1 - Definitions	x		
Art. 2 - Grant of rights			x
Art. 3 - Designation and authorization			x
Art. 4 - Withholding, revocation and limitation of authorization			x
Art. 5 - Application of laws		x	
Art. 6 - Direct transit	x		
Art. 7 - Recognition of certificates		x	
Art. 8 - Safety		x	
Art. 9 - Aviation security		x	
Art. 10 - Security of travel documents	x		
Art. 11 - Inadmissible and undocumented passengers and deportees	x		
Art. 12 - User charges		x	
Art. 13 - Customs duties		x	
Art. 14 - Taxation		x	
Art. 15 - Fair competition		x	
Art. 16 - Capacity			x
Art. 17 - Pricing (Tariffs)			x
Art. 18 - Safeguards		x	
Art. 19 - Competition laws		x	
Art. 20 - Currency conversion and remittance of earnings		x	
Art. 21 - Sale and marketing of air service products		x	

** Article 32 (Approval of schedules), Article 36 (Multilateral agreements), Article 37 (Termination) and Annex I (Route schedules) are not applicable to Attachment B.

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Column 1	Column 2 (no change necessary)	Column 3 (Party designation change only)	Column 4 (rewrite or addition required)
Art. 22 - Non-national personnel and access to local services		x	
Art. 23 - Change of gauge		x	
Art. 24 - Ground handling		x	
Art. 25 - Codesharing/Cooperative arrangements		x	
Art. 26 - Leasing		x	
Art. 27 - Intermodal services		x	
Art. 28 - Computer reservation systems (CRS)		x	
Art. 29 - Ban on smoking	x		
Art. 30 - Environmental protection	x		
Art. 31 - Statistics		x	
Art. 33 - Consultations		x	
Art. 34 - Settlement of disputes			x
Art. 35 - Amendments			x
Art. 38 - Registration with ICAO	x		
Art. 39 - Entry into force			x
Annex II - Non-scheduled/Charter operations		x	
Annex III - Air cargo operations	x		
Annex IV - Transitional measures			x
Part II - Articles not in Attachment A			
Exceptions			x
Existing agreements			x
Review			x
Withdrawal			x
Depository			x
Signature and ratification			x
Accession			x

Throughout this document:

1) an asterisk is used to indicate that a specific provision within an article is common to each of the traditional, transitional and full liberalization approaches. No asterisk appears if the whole article applies to all three approaches. However in some articles, such as “Designation and authorization”, the provision is reproduced in full for each approach for purposes of readability and clarity of the Article;

2) in an article which provides for more than one approach, i.e. traditional, transitional, full liberalization, the same sequential order of presentation is maintained down the page, for ease of readability;

3) similarly, where there are options within an approach (for example, two options within the transitional approach) these are also provided separately, but not in any order of priority.

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<p>Article _ Grant of rights</p>	
<div style="text-align: center; border: 1px solid black; width: fit-content; margin: 0 auto; padding: 5px;"> <p>Traditional</p> </div> <p>1.* Each Party grants to the other Parties the following rights for the conduct of international air transportation by the airlines of the other Parties:</p> <p>a)* the right to fly across its territory without landing;</p> <p>b)* the right to make stops in its territory for non-traffic purposes;</p> <p>c) the right to provide international air transportation to and from any other Party, provided such services originate or terminate in the territory of the Party designating the airline. [International air transportation to or coming from the territories of non-Party State shall require the authorization of the Parties involved.]</p> <p style="text-align: center;">[Paragraph 2, option 1 of 2]</p> <p>2. Nothing in this Agreement shall be deemed to confer on the airline or airlines of one Party the right to take on board, in the territory of another Party, passengers, baggage, cargo, or mail carried for remuneration and destined for another point in the territory of that other Party.</p> <p style="text-align: center;">[Paragraph 2, option 2 of 2]</p> <p>2. A Party shall not be required to grant cabotage rights to an airline of another Party.</p>	<p><i>A key issue for States negotiating a regional or plurilateral agreement is what provisions, if any, should be made in the regional or plurilateral agreement with respect to rights for air services between Parties to the agreement and non-Party States.</i></p> <p><i>The foregoing first two freedoms of the air, although included in multilateral agreements (for scheduled services, the International Air Services Transit Agreement (IASTA); for non-scheduled services, Article 5 of the Convention), are also commonly included in regional or plurilateral agreements, either because some States may not be, or may cease to be, parties to the IASTA.</i></p> <p><i>In a traditional approach, an agreement does not deal with air services between a Party and a non-Party, leaving those rights to be determined by the relevant agreements between a Party and non-Parties. In this sense such agreements could be described as self-contained. An alternative for this type of self-contained agreement is for the Parties to define and exchange the first five freedoms of the air.</i></p> <p><i>In a manner similar to the practice in bilateral agreements, an approach may be for Parties to explicitly exclude cabotage rights (option 1), or to make it clear in the agreement that Parties to the Agreement are not required to grant such rights, leaving this decision to the Parties to the Agreement (option 2).</i></p>

Article _ Grant of rights (cont'd)	
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;">Transitional</div>	
<p>1.* Each Party grants to the other Parties the following rights for the conduct of international air transportation by the airlines of the other Parties:</p> <p>a)* the right to fly across its territory without landing;</p> <p>b)* the right to make stops in its territory for non-traffic purposes; and</p> <p>c) the right to provide international air transportation to and from any other Party, and between non-Party States and those other Parties with which the designating State has negotiated Fifth freedom rights, provided such services originate or terminate in the territory of the Party designating the airline; and</p> <p>d) the right to provide [scheduled and] non-scheduled air cargo services between any other Party and a non-Party State.</p> <p style="text-align: center;">[Paragraph 2, option 1 of 2]</p> <p>2. Until [insert a date agreed to by the Parties], a Party shall authorize cabotage traffic rights for the designated airline(s) of every other Party, provided that the traffic rights are exercised on a service which constitutes and is scheduled as an extension of a service from, or as preliminary to, the Party designating the airline.</p> <p style="text-align: center;">[Paragraph 2, option 2 of 2]</p> <p>2. A Party shall authorize cabotage rights for the designated airline(s) of every other Party provided the cabotage segment is operated between two international segments of the flight.</p>	<p><i>The foregoing first two freedoms of the air, although included in multilateral agreements (for scheduled services, the International Air Services Transit Agreement (IASTA)); for non-scheduled services, Article 5 of the Convention), are also commonly included in regional or plurilateral agreements, either because some States may not be, or may cease to be, parties to the IASTA.</i></p> <p><i>This transitional approach envisions the negotiation between Parties to the Agreement of beyond rights to non-Parties (Fifth freedom rights) on the basis of specific criteria. Exercise of these rights would, of course, be dependent on obtaining the corresponding rights from the non-Party State.</i></p> <p><i>This approach includes Seventh freedom for scheduled (as an option) and non-scheduled all cargo services.</i></p> <p><i>The transitional approach to cabotage would usually precede a conversion to unrestricted cabotage after the agreed date.</i></p> <p><i>The direct link of domestic and international flight segments caused this type of operation to be described as consecutive cabotage (Eighth freedom).</i></p> <p><i>This option limits cabotage to situations where an air carrier provides international transportation to two points in another State on a co-terminal basis (where the same flight serves two points in another State.)</i></p>

Article _ Grant of rights (cont'd)	
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;">Full liberalization</div> <p>1.* Each Party grants to the other Parties the following rights for the conduct of international air transportation by the airlines of the other Parties:</p> <p>a)* the right to fly across its territory without landing;</p> <p>b)* the right to make stops in its territory for non-traffic purposes; and</p> <p>c) the right, in accordance with the terms of their designations, to perform scheduled and charter international air transportation between points on the following routes:</p> <p style="padding-left: 40px;">i) from points behind the territory of the Party designating the airline via the territory of that Party and intermediate points to any point or points in the territory of the Party granting the right and beyond;</p> <p style="padding-left: 40px;">ii) for passenger and all-cargo service or services, between the territory of the Party granting the right and any point or points; and</p> <p>d) the rights otherwise specified in the Agreement.</p> <p>2. Each designated airline may on any or all flights and at its option:</p> <p>a) operate flights in either or both directions;</p> <p>b) combine different flight numbers within one aircraft operation;</p>	<p><i>The foregoing first two freedoms of the air, although included in multilateral agreements (for scheduled services, the International Air Services Transit Agreement (IASTA); for non-scheduled services, Article 5 of the Convention), are also commonly included in regional or plurilateral agreements, either because some States may not be, or may cease to be, parties to the IASTA.</i></p> <p><i>The full liberalization formula accords each Party not only full traffic rights to/from every other Party to the agreement but Fifth freedom rights to/from the territory of every other Party and non-Party States as well as Seventh freedom for all-cargo services. However, as with the transitional formulation, the exercise of Fifth freedom rights between another Party and a non-Party will depend on the rights available between the non-Party and the Party exercising the Fifth freedom rights in the regional or plurilateral agreement. (For example, the more "open skies" bilateral agreements which a Party has with non-Party States, the more potential Fifth freedom routes it will have to/from other Parties to the agreement.) Some agreements may also grant rights with respect to a specific type of service, for example including a provision dealing with non scheduled cargo flights to non-Party States.</i></p> <p><i>Most of these provisions on operational flexibility are similar to that of liberal bilateral provisions that are usually covered in a Route schedule.</i></p>

<p style="text-align: center;">Article _ Grant of rights (cont'd)</p>	
<p style="text-align: center;">Full liberalization (cont'd)</p> <p>c) serve behind, intermediate and beyond points and points in the territories of the Parties on the routes in any combination and in any order;</p> <p>d) omit stops at any point or points;</p> <p>e) transfer traffic from any of its aircraft to any of its other aircraft at any point on the routes;</p> <p>f) serve points behind any point in its territory with or without change of aircraft or flight number and hold out and advertise such services to the public as through services;</p> <p>g) make stopovers at any points whether within or outside the territory of any Party;</p> <p>h) carry transit traffic through any other Party's territory; and</p> <p>i) combine traffic on the same aircraft regardless of where such traffic originates;</p> <p>without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under the present Agreement.</p> <p>3. On any international segment or segments of the agreed routes, a designated airline may perform international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated; provided that [with the exception of all-cargo services] the transportation beyond such point is a continuation of the transportation from the territory of the Party that has designated the airline and, in the inbound direction, the transportation to the territory of the Party that has designated the airline is a continuation of the transportation from beyond such point.</p>	<p><i>This provision may not be needed if the agreement includes an article on Change of gauge.</i></p> <p><i>The provision provides extensive operational flexibility in the use of equipment. This type of provision would , for example, enable a hub type operation to be established at the change point, subject of course to agreement being reached with other relevant partners. The only restriction is that services be conducted in a linear fashion, that is that the flight on the second sector be the extension or continuation of the prior connecting outbound or inbound flight. The bracketed language removes this restriction for all-cargo services.</i></p>

<p style="text-align: center;">Article _ Grant of rights (cont'd)</p>	
<p style="text-align: center;">Full liberalization (cont'd)</p> <p>4. A Party shall authorize cabotage rights for the designated airline(s) of every other Party without restriction.</p>	<p><i>Full liberalization does not require any link between the cabotage segment and any international segment; it would permit a designated airline of one Party to establish a hub and spoke operation (with domestic segments as the spokes) in the territory of any other Party (stand alone cabotage or Ninth freedom).</i></p>

<p style="text-align: center;">Article _ Designation and authorization</p>	
<p style="text-align: center; border: 1px solid black; padding: 5px;">Traditional</p> <p>1. Each Party shall have the right to designate in writing an airline [or an eligible airline from another Party State] to operate the agreed services in accordance with this Agreement and to withdraw or alter such designation. Such designation shall be transmitted to the other Parties in writing through diplomatic channels [and to the Depository].</p> <p>2.* On receipt of such a designation, and of application from the designated airline, in the form and manner prescribed for operating authorization [and technical permission], each Party shall grant the appropriate operating authorization with minimum procedural delay, provided that:</p> <p>a) the airline is substantially owned and effectively controlled by one or more of the Parties to this Agreement, their nationals or both;</p>	<p><i>The formulation of the Designation and authorization provision may be simplified by addressing the reasons in paragraph 2 for a State to receive an authorization in the Revocation of authorization Article, since the conditions for not granting an authorization are the same.</i></p> <p><i>The traditional approach refers to one airline or a single designation. An option may also be for a State Party to designate an eligible airline from another State Party to operate air services on its behalf. In this case the Parties, prior to granting the authorization, should agree on certain eligibility criteria such as the right of establishment, licensing, and safety and security standards.</i></p> <p><i>The traditional ownership and control criteria in regional or plurilateral agreements and arrangements is common ownership and control of the air carrier concerned by Parties to the agreement and/or their nationals. As an attempt to broaden the ownership and control requirement and to encourage multinational airlines this has faced the problem of the acceptance of this criteria by non-Party States. In the absence of widespread acceptance by non-Party States of common ownership and control criteria, regionally owned airlines may find their markets confined to the territories of other Parties to the regional or plurilateral agreement or arrangement.</i></p>

Article _ Designation and authorization (cont'd)	
Traditional (cont'd)	
<p>b)* the Party designating the airline is in compliance with the provisions set forth in Article _ (Safety) and Article _ (Aviation Security); and</p> <p>c)* the designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party considering the application or applications.</p> <p>3.* On receipt of the operating authorization of paragraph 2, a designated airline may at any time begin to operate the agreed services for which it is so designated, provided that the airline complies with the applicable provisions of this Agreement.</p> <p>[4.* Parties granting operating authorizations in accordance with paragraph 2 of this Article shall notify such action to the Depository.]</p>	<p><i>For a Party which receives the designation, it would retain the discretionary right of refusal as a measure of control to address legitimate concerns if and when required. This provision addresses potential concerns such as safety, security or other economic aspects including potential emergence of "flags of convenience".</i></p>
Transitional	
<p>1. Each Party shall have the right to designate one or more airlines to operate the agreed services in accordance with this Agreement and to withdraw or alter such designation. Such designation shall be transmitted to the other Parties in writing through diplomatic channels [and to the Depository].</p> <p>2.* On receipt of such a designation, and of application from the designated airline, in the form and manner prescribed for operating authorization [and technical permission], each Party shall grant the appropriate operating authorization with minimum procedural delay, provided that:</p>	<p><i>As an option, upon granting of an authorization, Parties agree to notify the Depository of the agreement who is responsible of maintaining a centralized register of airline designation and operating authorizations.</i></p> <p><i>The transitional approach refers to one or more airlines or multiple designation. The phrasing was sometimes interpreted as being met by the designation of two airlines. The transitional approach also includes formulae for increasing the number of designated airlines on specific routes based on, for example, negotiated multi-year increases or the achievement of a specified level of passenger traffic in city-pair markets.</i></p>

<p style="text-align: center;">Article _ Designation and authorization (cont'd)</p>	
<p style="text-align: center;">Transitional (cont'd)</p> <p>a) the designated airline has its principal place of business (see (i) below) [and permanent residence] in the territory of the designating Party;</p> <p>b) the Party designating the airline has and maintains effective regulatory control (see (ii) below) of the airline;</p> <p><i>Notes.—</i></p> <p>(i) evidence of principal place of business includes such factors as: the airline is established and incorporated in the territory of the designating Party in accordance with relevant national laws and regulations, has a substantial amount of its operations and capital investment in physical facilities in the territory of the designating Party, pays income tax, registers and bases its aircraft there, and employs a significant number of nationals in managerial, technical and operational positions.</p> <p>(ii) evidence of effective regulatory control includes but is not limited to: the airline holds a valid operating licence or permit issued by the licensing authority such as an Air Operator Certificate (AOC), meets the criteria of the designating Party for the operation of international air services, such as proof of financial health, ability to meet public interest requirement, obligations for assurance of service; and the designating Party has and maintains safety and security oversight programmes in compliance with ICAO standards.</p>	<p><i>This transitional approach recommended by ICAO removes the ownership requirement but retains effective control (including safety and security oversight) while adding incorporation in and principal place of business in the designating Party. It would permit investment by entities from non-Parties in airlines of the Parties. Such control is envisioned primarily through licensing which can include both economic and operational elements. The arrangement would not require the State to change its existing laws, policies or regulations pertaining to national ownership and control of its own national air carrier(s), but would allow such change if and when the State wishes to do so.</i></p>

<p>Article _ Designation and authorization (cont'd)</p>	
<p style="text-align: center;">Transitional (cont'd)</p> <p>c)* the Party designating the airline is in compliance with the provisions set forth in Article _ (Safety) and Article _ (Aviation Security); and</p> <p>d)* the designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party considering the application or applications.</p> <p>3.* On receipt of the operating authorization of paragraph 2, a designated airline may at any time begin to operate the agreed services for which it is so designated, provided that the airline complies with the applicable provisions of this Agreement.</p> <p>[4.* Parties granting operating authorizations in accordance with paragraph 2 of this Article shall notify such action to the Depository.]</p>	<p><i>For a Party which receives the designation, it would retain the discretionary right of refusal as a measure of control to address legitimate concerns if and when required. This provision addresses potential concerns such as safety, security or other economic aspects including potential emergence of "flags of convenience".</i></p> <p><i>As an option, upon granting of an authorization, Parties agree to notify the Depository of the agreement who is responsible of maintaining a centralized register of airline designation and operating authorizations.</i></p>
<p style="text-align: center; border: 1px solid black; padding: 5px;">Full liberalization</p> <p>1. Each Party shall have the right to designate as many airlines as it wishes to operate the agreed services in accordance with this Agreement and to withdraw or alter such designation. Such designation shall be transmitted to the other Parties in writing through diplomatic channels [and to the Depository].</p> <p>2.* On receipt of such a designation, and of application from the designated airline, in the form and manner prescribed for operating authorization [and technical permission], each Party shall grant the appropriate operating authorization with minimum procedural delay, provided that:</p> <p>a) the airline is under the effective regulatory control of the designating Party;</p> <p style="text-align: center;">Full liberalization (cont'd)</p>	<p><i>The full liberalization approach refers to as many airlines or no quantitative limit on the number of airlines which can be designated.</i></p> <p><i>Full liberalization removes all criteria pertaining to the airline, but requires effective regulatory control by the designating State to ensure compliance with Safety and Security standards. It would also include a "right of establishment" that is a right for non-nationals to establish and operate an airline in the territory of a Party which could then engage in domestic and international air services.</i></p>

<p style="text-align: center;">Article _ Designation and authorization (cont'd)</p>	
<p>b)* the Party designating the airline is in compliance with the provisions set forth in Article _ (Safety) and Article _ (Aviation Security); and</p> <p>c)* the designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party considering the application or applications.</p> <p>3.* On receipt of the operating authorization of paragraph 2, a designated airline may at any time begin to operate the agreed services for which it is so designated, provided that the airline complies with the applicable provisions of this Agreement.</p> <p>[4.* Parties granting operating authorizations in accordance with paragraph 2 of this Article shall notify such action to the Depository.]</p>	<p><i>For a Party which receives the designation, it would retain the discretionary right of refusal as a measure of control to address legitimate concerns if and when required. This provision addresses potential concerns such as safety, security or other economic aspects including potential emergence of "flags of convenience".</i></p> <p><i>As an option, upon granting of an authorization, Parties agree to notify the Depository of the agreement who is responsible of maintaining a centralized register of airline designation and operating authorizations.</i></p>

<p style="text-align: center;">Article _ Withholding, revocation and limitation of authorization</p>	<p><i>The reasons for any Party that receives a request for an authorization to not authorize initially or to subsequently revoke, suspend or condition an authorization it has granted are the same. Consequently, if the criteria for designation requires such formulation as common ownership and control of the air carrier concerned by Parties to the agreement and/or their nationals or “principal place of business”, then the failure to meet that requirement will be grounds for revocation, suspension or the imposition of conditions on the operating permission.</i></p> <p><i>Other bases for revocation are broader in scope and are covered by cross reference to the requirements to comply with the provisions on safety, security and the laws and regulations of that Party. The reasons for adverse action on an authorization are the same as those in the Bilateral TASA (Attachment A).</i></p>
<p style="text-align: center;">Traditional</p> <p>1.* The aeronautical authorities of each Party shall have the right to withhold the authorizations referred to in Article _ (Designation and authorization) of this Agreement with respect to an airline designated by any other Party, and to revoke, suspend or impose conditions on such authorizations, temporarily or permanently:</p> <p>a) in the event that they are not satisfied that substantial ownership and effective control are vested in one or more of the Parties designating the airline, their nationals, or both;</p> <p>b)* in the event of failure of the Party designating the airline to comply with the provisions set forth in Article _ (Safety) and Article _ (Aviation security); and</p> <p>c)* in the event of failure that such designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party receiving the designation.</p> <p style="text-align: center;">Transitional</p> <p>1.* The aeronautical authorities of each Party shall have the right to withhold the authorizations referred to in Article _ (Designation and authorization) of this Agreement with respect to an airline designated by any other Party, and to revoke, suspend or impose conditions on such authorizations, temporarily or permanently:</p>	

<p style="text-align: center;">Article _ Withholding, revocation and limitation of authorization (cont'd)</p>	
<p style="text-align: center;">Transitional (cont'd)</p> <p>a) in the event that they are not satisfied that the designated airline has its principal place of business (see (i) below) [and permanent residence] in the territory of the designating Party;</p> <p>b) in the event that they are not satisfied that the Party designating the airline has and maintains effective regulatory control (see (ii) below) of the airline;</p> <p><i>Notes.—</i></p> <p>(i) evidence of principal place of business includes such factors as: the airline is established and incorporated in the territory of the designating Party in accordance with relevant national laws and regulations, has a substantial amount of its operations and capital investment in physical facilities in the territory of the designating Party, pays income tax, registers and bases its aircraft there, and employs a significant number of nationals in managerial, technical and operational positions.</p> <p>(ii) evidence of effective regulatory control includes but is not limited to: the airline holds a valid operating licence or permit issued by the licensing authority such as an Air Operator Certificate (AOC), meets the criteria of the designating Party for the operation of international air services, such as proof of financial health, ability to meet public interest requirement, obligations for assurance of service; and the designating Party has and maintains safety and security oversight programmes in compliance with ICAO standards.</p> <p>c)* in the event of failure of the Party designating the airline to comply with the provisions set forth in Article _ (Safety) and Article _ (Aviation security); and</p>	<p><i>This transitional criteria removes the ownership requirement but retains effective control while adding incorporation in and principal place of business in the designating Party. It would permit investment by entities from non-Parties in airlines of the Parties.</i></p>

<p style="text-align: center;">Article _ Withholding, revocation and limitation of authorization (cont'd)</p>	
<p style="text-align: center;">Transitional (cont'd)</p> <p>d)* in the event of failure that such designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party receiving the designation.</p> <p style="text-align: center;">Full liberalization</p> <p>1.* The aeronautical authorities of each Party shall have the right to withhold the authorizations referred to in Article _ (Designation and authorization) of this Agreement with respect to an airline designated by any other Party, and to revoke, suspend or impose conditions on such authorizations, temporarily or permanently:</p> <p>a) in the event that they are not satisfied that the airline is under the effective regulatory control of the designating State;</p> <p>b)* in the event of failure of the Party designating the airline to comply with the provisions set forth in Article _ (Safety) and Article _ (Aviation security); and</p> <p>c)* in the event of failure that such designated airline is qualified to meet other conditions prescribed under the laws and regulations normally applied to the operation of international air transport services by the Party receiving the designation.</p>	

<p style="text-align: center;">Article _ Withholding, revocation and limitation of authorization (cont'd)</p>	
<p style="text-align: center;">Traditional/Transitional/ Full liberalization</p> <p>2.* Unless immediate action is essential to prevent infringement of the laws and regulations referred to above or unless safety or security requires action in accordance with the provisions of Article _ (Safety) or Article _ (Aviation security), the rights enumerated in paragraph 1 of this Article shall be exercised only after consultations between the aeronautical authorities in conformity with Article _ (Consultation) of this Agreement.</p>	<p><i>Compliance with the laws and regulations as well as safety and security provisions is constrained in paragraph 2 by the need in the first instance for consultation.</i></p>

<p>Article _ Capacity</p>	
<p style="text-align: center;">[Option 1 of 2]</p> <div style="border: 1px solid black; padding: 5px; margin: 10px auto; width: fit-content;"> <p style="text-align: center;">Traditional/Transitional/ Full liberalization</p> </div> <p>Capacity offered on air services shall be subject to Article _ (Fair competition).</p>	<p><i>An alternative, applicable to all three approaches, where a Party believes the amount of additional capacity to be an unfair competitive practice would be to invoke Article _ (Fair competition).</i></p>
<p style="text-align: center;">[Option 2 of 2]</p> <div style="border: 1px solid black; padding: 5px; margin: 10px auto; width: fit-content;"> <p style="text-align: center;">Traditional</p> </div> <p style="text-align: center;">[Paragraphs 1 and 2, option 1 of 2]</p> <ol style="list-style-type: none"> 1. Any Party may require designated airlines of the other Parties to file their schedules for any route to or from its territory. 2. Any Party may prevent an increase in capacity on any route to or from its territory which would lead to a serious financial loss to the designated airlines operating services on that route. 	<p><i>Although no predetermination of capacity provision is found in any regional/plurilateral agreement, there are instances of limitations being permitted on capacity in such agreements. These limitations are designed to meet concerns of States with smaller airlines that their services would not be displaced by excessive capacity.</i></p>
<p style="text-align: center;">[Option 2 of 2]</p> <p>Any Party may limit the offer of non-scheduled passenger services on a route on which scheduled passenger service exists, if additional non-scheduled passenger services would endanger the stability of such scheduled service.</p>	<p><i>A variation on a general right to limit capacity is applying the limitation to a certain type of service, such as non-scheduled passenger services.</i></p>
<div style="border: 1px solid black; padding: 5px; margin: 10px auto; width: fit-content;"> <p style="text-align: center;">Transitional</p> </div> <p>Until [an agreed date] any Party may limit the capacity of a designated airline on a route to or from its territory to [an agreed percentage] of the total capacity offered on that route.</p>	<p><i>A time-limited transitional measure is to allow the capacity offered on a route to vary from the traditional 50/50 division to a 60/40 proportion or some other formula. This is not suited to routes with more than two airlines.</i></p>
<div style="border: 1px solid black; padding: 5px; margin: 10px auto; width: fit-content;"> <p style="text-align: center;">Full liberalization</p> </div> <ol style="list-style-type: none"> 1. Each Party shall allow each designated airline to determine the frequency and capacity of the international air transportation it offers based on commercial considerations of the marketplace. 	<p><i>Each designated airline may offer capacity based on Free determination where individual airlines determine capacity to be offered without government approval or intervention , subject to competition law(s) where applicable.</i></p>

<p style="text-align: center;">Article _ Capacity (cont'd)</p>	
<p style="text-align: center;">Full liberalization (cont'd)</p> <p>2. No Party shall unilaterally limit the volume of traffic, frequency, or regularity of service, or the aircraft type or types operated by the designated airlines of any other Party, except as may be required for customs, technical, operational, or environmental reasons under uniform conditions consistent with Article 15 of the Convention.</p> <p>3. No Party shall impose on another Party's designated airlines a first refusal requirement, uplift ratio, no-objection fee, or any other requirement with respect to the capacity, frequency or traffic which would be inconsistent with the purposes of this Agreement.</p> <p>4. No Party shall require the filing of schedules, programmes for charter flights, or operational plans by airlines of the other Party for approval, except as may be required on a non-discriminatory basis to enforce uniform conditions as foreseen by paragraph 2 of this Article or as may be specifically authorized in an Annex to this Agreement. If a Party requires filings for information purposes, it shall minimize the administrative burdens of filing requirements and procedures on air transportation intermediaries and on designated airlines of the other Party.</p>	<p><i>The Parties agree to abrogate their direct control of capacity while retaining the ability to apply non-discriminatory, multilateral controls consistent with the Convention.</i></p> <p><i>No specific provision on the relationship between capacity and demand is contained in the Free determination method, the competitive pricing and scheduling responses of airlines to market forces being relied on to bring about necessary adjustment. This mechanism may work less effectively where the free play of market forces is impaired or inhibited.</i></p> <p><i>The Free determination method normally proscribes all forms of discrimination or unfair competitive practices, including predatory pricing, such practices being the cause for possible consultation and remedy. The provision on safeguards for unfair competitive practices addresses this additional and complimentary procedure.</i></p> <p><i>Given the wide latitude accorded designated airlines on the capacity they may offer and in view of the increased potential for anti-competitive actions such as "capacity dumping", the Full liberalization approach should be subject to intervention on the basis of the competition laws of the Parties where applicable.</i></p>

Article _ Tariffs (Pricing)	
<p>[Option 1 of 2]</p> <div style="border: 1px solid black; padding: 5px; margin: 10px auto; width: fit-content;"> <p style="text-align: center;">Traditional/Transitional/ Full liberalization</p> </div> <p>Prices (Tariffs) shall be subject to Article _ (Fair competition).</p>	<p><i>An alternative, applicable to all three approaches, where any Party invokes Article _ (Fair competition) due to prices charged that may constitute unfair competitive behavior.</i></p>
<p>[Option 2 of 2]</p> <div style="border: 1px solid black; padding: 5px; margin: 10px auto; width: fit-content;"> <p style="text-align: center;">Transitional</p> </div> <p>1. The tariffs to be applied by the designated airline or airlines of any Party for services covered by this Agreement shall be subject to the principle of Country of Origin tariff approval.</p> <p>2. Each Party shall have the right to approve or disapprove tariffs for one-way or round-trip carriage between the territories of the Parties which commences in its own territory. No Party shall take unilateral action to prevent the inauguration of proposed tariffs or the continuation of effective tariffs for one-way or round-trip carriage between the territories of the Parties commencing in the territory of the other Party.</p> <p>[3. Notwithstanding the provisions of this Article, a designated airline shall be free to apply tariffs in respect of carriage on non-scheduled services, as long as these tariffs have been notified to the Parties concerned.]</p>	<p><i>This transitional approach to approve tariffs between the Parties is based on the principle of country of origin</i></p> <p><i>The scope of approval falls primarily on tariffs for third and fourth freedom services which are completely within the regulatory ambit of the concerned Parties.</i></p> <p><i>A provision on the approval of tariffs for non-scheduled services is included on an optional basis.</i></p>
<div style="border: 1px solid black; padding: 5px; margin: 10px auto; width: fit-content;"> <p style="text-align: center;">Full liberalization</p> </div> <p>Prices (Tariffs) charged by airlines shall not be required to be filed with, or approved by, any Party.</p>	<p><i>Under Full liberalization, tariffs could not be disapproved for any reason. Airlines practices with respect to tariffs could be made subject to the competition laws of the Parties where applicable.</i></p>

<p style="text-align: center;">Article _ Settlement of disputes</p>	
<p style="text-align: center;">Traditional</p> <p>1. Any dispute which is not settled by consultations or negotiation shall be submitted to arbitration if any one of the Parties in dispute so requests and shall be referred accordingly to one or more arbitrators selected by agreement by the Parties in dispute. If within forty-five days from the date of the request for arbitration the Parties in dispute are unable to agree on the selection of an arbitrator or arbitrators, any of those Parties may request the [official or entity of the regional organization] to nominate a single arbitrator to whom the dispute shall be referred for decision.</p> <p>2. The decision of the arbitrator or arbitrators shall be binding on all Parties to the dispute.</p> <p>3. If a Party does not comply with an arbitral decision, the other Parties can adopt measures restricting the operation of the airlines of the non-complying State to achieve compliance.</p>	<p><i>A principle difference between the dispute settlement process in bilateral and those regional agreements which are based on broader regional organizations is the recourse to, and the role played by, inter alia, supra-national bodies such as the European Commission, the Commission of the Cartagena Agreement (The Andean Pact) and the Council of Ministers of the Common Market for Eastern and Southern Africa, as well as the dispute settlement processes of the broader regional organization which can make binding decisions with respect to disputes between member States which are Parties to a regional agreement or arrangement.</i></p> <p><i>Traditional dispute settlement provisions follow closely the bilateral pattern of consultations, negotiation and arbitration but takes into account in its arbitral process the possibility that disputes may involve more than two Parties. In addition, in the event that the Parties in the dispute are unable to agree on an arbitrator, the process provides for recourse to a regional entity which plays an intermediate role in the selection process.</i></p>

Article _ Settlement of disputes (cont'd)	
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> <p>Transitional and Full liberalization</p> </div>	<p><i>This alternative developed by ICAO is to address those commercial disputes, such as on pricing, capacity and other competitive practices that arise in a liberalized environment. It could also be used to address disputes beyond unfair practices, for example, disputes related to market access in a less regulatory controlled environment. The mechanism is deliberately broader in scope and could apply to issues not specifically included in the agreement. It is not intended as a substitute for the formal arbitration process, but rather as a means to resolve disputes in a relatively simple, responsive and cost effective manner.</i></p> <p><i>The normal consultation process may resolve such disputes but could also have the effect of prolonging an unfair competitive practice to the commercial detriment of one or more airlines. Consequently, this procedure, which is less formal and time consuming than arbitration, is designed, by means of a panel, to reach a resolution through mediation, fact finding or decision, using the services of an expert or experts in the subject matter of the dispute. The primary objective is to enable the Parties to restore a healthy competitive environment in the airline market place as expeditiously as possible.</i></p> <p><i>The mechanism requires the Parties to agree in advance on such matters as the purpose of the panel, viz its terms of reference and procedure, and in particular whether the panel is permitted to grant any interim or injunctive relief to the complainant. Such relief could take the form, for example, of a temporary freeze or reversion to the status quo ante.</i></p>
<p>1. Any dispute which cannot be resolved by consultations and negotiations, may at the request of either Party to the agreement be submitted to a mediator or a dispute settlement panel. Such a mediator or panel may be used for mediation, determination of the substance of the dispute or to recommend a remedy or resolution of the dispute.</p>	
<p>2. The Parties shall agree in advance on the terms of reference of the mediator or of the panel, the guiding principles or criteria and the terms of access to the mediator or the panel. They shall also consider, if necessary, providing for an interim relief and the possibility for the participation of any Party that may be directly affected by the dispute, bearing in mind the objective and need for a simple, responsive and expeditious process.</p>	

<p style="text-align: center;">Article _ Settlement of disputes (cont'd)</p>	
<p style="text-align: center;">Transitional and Full liberalization (cont'd)</p> <p>3. A mediator or the members of a panel may be appointed from a roster of suitably qualified aviation experts maintained by ICAO. The selection of the expert or experts shall be completed within fifteen (15) days of receipt of the request for submission to a mediator or to a panel. If the Parties fail to agree on the selection of an expert or experts, the selection may be referred to the President of the Council of ICAO. Any expert used for this mechanism should be adequately qualified in the general subject matter of the dispute.</p> <p>4. A mediation should be completed within sixty (60) days of engagement of the mediator or the panel and any determination including, if applicable, any recommendations, should be rendered within sixty (60) days of engagement of the expert or experts. The Parties may agree in advance that the mediator or the panel may grant interim relief to the complainant, if requested, in which case a determination shall be made initially.</p> <p>5. The Parties shall cooperate in good faith to advance the mediation and to implement the decision or determination of the mediator or the panel, unless they otherwise agree in advance to be bound by decision or determination. If the Parties agree in advance to request only a determination of the facts, they shall use those facts for resolution of the dispute.</p> <p>6. The costs of this mechanism shall be estimated upon initiation and apportioned equally, but with the possibility of re-apportionment under the final decision.</p> <p>7. The mechanism is without prejudice to the continuing use of the consultation process, the subsequent use of arbitration, or Withdrawal under Article _.</p>	<p><i>The two important time-frames built in to the mechanism are 15 days for selection of the experts to constitute the panel, and 60 days for the rendering of a decision or determination. Thus the emphasis is on minimizing legal formalities and procedural time-frames, yet allowing adequate time for the panel to arrive at a decision or determination.</i></p>

Article _ Settlement of disputes (cont'd)	
Transitional and Full liberalization (cont'd)	
<p>8. If the Parties fail to reach a settlement through mediation, the dispute may, at the request of one Party, be submitted to arbitration with respect to another Party in accordance with the procedures set forth below. The Party submitting the dispute to arbitration shall notify all other Parties of the dispute at the same time that it submits its arbitration request.</p>	<p><i>The use of the mechanism does not preclude the implementation of the arbitration process if that is also provided for in the agreement and if the above mechanism has failed to resolve the dispute to the satisfaction of one or more Parties. Nevertheless, it may be expected that the subsequent use of arbitration should be unnecessary if the Parties have committed to this complementary procedure for resolving certain kinds of commercial and time sensitive disputes.</i></p>
<p>9. Arbitration shall be by a panel of three arbitrators to be constituted as follows:</p>	<p><i>In the case Parties fail to reach settlement through mediation, the dispute is referred for decision by a panel of arbitrators. The Article includes a very detailed arbitration procedure for disputes involving more than two parties as well as a procedure for Parties to intervene in an arbitral procedure involving other Parties. Time frames are provided for the various steps in the arbitral process.</i></p>
<p>a) within 30 days after the receipt of a request for arbitration, each Party to the dispute shall name one arbitrator. Within 60 days after these two arbitrators have been named, the Parties to the dispute shall by agreement appoint a third arbitrator, who shall act as President of the arbitral panel;</p>	
<p>b) if either Party to the dispute fails to name an arbitrator, or if the third arbitrator is not appointed in accordance with subparagraph a) of this paragraph, either Party may request the President of the Council of the International Civil Aviation Organization to appoint the necessary arbitrator or arbitrators within 30 days. If the President of the Council is of the same nationality as one of the Parties to the dispute, the most senior Vice President who is not disqualified on that ground shall make the appointment.</p>	

<p style="text-align: center;">Article _ Settlement of disputes (cont'd)</p>	
<p style="text-align: center;">Transitional and Full liberalization (cont'd)</p> <p>10. Except as otherwise agreed by the Parties to the dispute, the arbitral panel shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedural rules. The arbitral panel, once formed, may recommend interim measures pending its final determination. At the direction of the arbitral panel or at the request of either of the Parties to the dispute, a conference concerning the precise issues to be arbitrated and the specific procedures to be followed shall be held on a date determined by the arbitral panel, in no event later than 15 days after the third arbitrator has been appointed. If the Parties to the dispute are unable to reach agreement on these issues, the arbitral panel shall determine the precise issues to be arbitrated and the specific procedures to be followed.</p> <p>11. Except as otherwise agreed by the Parties to the dispute or as directed by the panel, the complaining Party shall submit a memorandum within 45 days of the time the third arbitrator is appointed, and the reply of the responding Party shall be due 60 days after the complaining Party submits its memorandum. The complaining Party may submit a pleading in response to such reply within 30 days after the submission of the responding Party's reply and the responding Party may submit a pleading in response to the complaining Party's pleading within 30 days after the submission of such pleading. The arbitral panel shall hold a hearing at the request of either Party or on its own initiative within 15 days after the last pleading is due.</p> <p>12. The arbitral panel shall attempt to render a written decision within 30 days after completion of the hearing or, if no hearing is held, after the date the last pleading is submitted. The decision of the majority of the arbitral panel shall prevail.</p>	<p><i>The arbitral panel determines its procedural rules including the recommendation of any interim relief measures for the Parties pending a final decision.</i></p>

<p style="text-align: center;">Article _ Settlement of disputes (cont'd)</p>	
<p style="text-align: center;">Transitional and Full liberalization (cont'd)</p> <p>13. The Parties to the dispute may submit requests for clarification of the decision within 15 days after it is rendered, and any clarification given shall be issued within 15 days of such request.</p> <p>14. In the case of a dispute involving more than two Parties, multiple Parties may participate on either or both sides of a proceeding described in this Article. The procedures set out in this Article shall be applied with the following exceptions:</p> <ul style="list-style-type: none">a) with respect to paragraph 9 a), the Parties on each side of a dispute shall together name one arbitrator;b) with respect to paragraph 9 b), if the Parties on one side of a dispute fail to name an arbitrator within the permitted time, the Party or Parties on the other side of the dispute may utilize the procedures in paragraph 9 b) to secure the appointment of an arbitrator; andc) with respect to paragraphs 10, 11, and 13, each of the Parties on either side of the dispute has the right to take the action provided to a Party. <p>15. Any other Party that is directly affected by the dispute has the right to intervene in the proceedings, under the following conditions:</p> <ul style="list-style-type: none">a) a Party desiring to intervene shall file a declaration to that effect with the arbitral panel no later than 10 days after the third arbitrator has been named;b) the arbitral panel shall notify the Parties to the dispute of any such declaration, and the Parties to the dispute shall each have 30 days from the date such notification is sent to submit to the arbitral panel any objection to an intervention under this paragraph. The arbitral panel shall decide whether to allow any intervention within 15 days after the date such objections are due;	

<p style="text-align: center;">Article _ Settlement of disputes (cont'd)</p>	
<p style="text-align: center;">Transitional and Full liberalization (cont'd)</p> <p>c) if the arbitral panel decides to allow an intervention, the intervening Party shall notify all other Parties to the Agreement of the intervention, and the arbitral panel shall take the necessary steps to make the documents of the case available to the intervening Party, who may file pleadings of a type and within a time limit to be set by the arbitral panel, within the timetable set out in paragraph 11 of this Article to the extent practical, and may participate in any subsequent proceedings; and</p> <p>d) the decision of the arbitral panel will be equally binding upon the intervening Party.</p> <p>16. All Parties to the dispute, including intervening Parties, shall, to the degree consistent with their law, give full effect to any decision or award of the arbitral panel.</p> <p>17. The arbitral panel shall transmit copies of its decision or award to the Parties to the dispute, including any intervening Parties. The arbitral panel shall provide to the Depository a copy of the decision or award, provided that appropriate treatment shall be accorded to confidential business information.</p> <p>18. The expenses of the arbitral panel, including the fees and expenses of the arbitrators, shall be shared equally by all of the Parties to the dispute, including intervening Parties. Any expenses incurred by the President of the Council of the International Civil Aviation Organization in connection with the procedures of paragraph 9 b) of this Article shall be considered to be part of the expenses of the arbitral panel.</p>	

<p>Article _ Amendments</p>	
<div style="text-align: center; border: 1px solid black; padding: 5px; margin: 10px auto; width: fit-content;"> <p>Traditional</p> </div> <p style="text-align: center;">[Option 1 of 2]</p> <p>Any Party may propose any amendment to the provisions of this Agreement. Such amendment shall only come into force after it has been accepted by all the other Parties.</p> <p style="text-align: center;">[Option 2 of 2]</p> <ol style="list-style-type: none"> 1. Any Party may propose an amendment to this Agreement. The text of any such amendment and the reasons therefor shall be transmitted to the [official of the regional organization] who shall transmit them to the Government of each Party. 2. The Parties shall communicate to the [official of the regional organization] whether or not the proposed amendment is acceptable and also to submit any comments thereon. 3. If all Parties agree to the proposed amendment and deposit their respective Instruments of Ratification with the [official of the regional organization], the amendment shall enter into force on the deposit of the last such Instrument of Ratification. 	<p><i>As with the settlement of disputes, for regional air transport arrangements which are based on broader regional organizations [for example, the European Union, the Andean Pact, and the Common Market for Eastern and Southern Africa] the relevant council or commission amends the arrangement through its power to issue new or amended regulations.</i></p> <p><i>One of the decisions which States contemplating a regional or plurilateral agreement with a formal amendment provision is what criteria to apply with respect to such amendments coming into force. A traditional approach would require unanimity, all Parties to ratify an amendment before it enters into force.</i></p> <p><i>An alternative traditional approach assigns a procedural role in the amendment process to an official of the regional organization. Amendments require the approval of all Parties to come into force.</i></p>

Article _ Amendments (cont'd)	
Transitional	
<p>1. The [body created by the Agreement] shall review and where necessary propose amendments to this Agreement.</p> <p>2. Such amendments shall come into force when approved by all Parties.</p>	<p><i>This transitional approach relies on a more simplified amendment process, nevertheless, approval by all Parties is required before the amendment enters into force.</i></p>
Full liberalization	
<p>1. The Agreement may be amended in accordance with the following procedures:</p> <p>a) if agreed by at least a simple majority of all Parties as of the date of proposal of the amendment, negotiations shall be held to consider the proposal;</p> <p>b) unless otherwise agreed, the Party proposing the amendment shall host the negotiations, which shall begin not more than 90 days after agreement is reached to hold such negotiations. All Parties shall have a right to participate in the negotiations;</p> <p>c) if adopted by at least a simple majority of the Parties attending such negotiations, the Depository shall then prepare and transmit a certified copy of the amendment to the Parties for their acceptance;</p> <p>d) any amendment shall enter into force, as between the Parties which have accepted it, 30 days following the date on which the Depository has received written notification of acceptance from a simple majority of the Parties; and</p> <p>e) following entry into force of such an amendment, it shall enter into force for any other Party 30 days following the date the Depository receives written notification of acceptance from that Party.</p>	<p><i>The full liberalization approach provides flexibility, but also potential complexity to the amendment process by providing two procedures for amendment.</i></p> <p><i>One procedure is based on acceptance and ratification of an amendment by a simple majority of the Parties attending a negotiation to amend the agreement. The amendment is in force only between the Parties which have ratified it, but other States can accept and ratify the amendment subsequently.</i></p>

<p>Article _ Amendments (cont'd)</p>	
<p style="text-align: center;">Full liberalization (cont'd)</p> <p>2. In lieu of the procedures set forth in paragraph 1, the Agreement may be amended in accordance with the following procedures:</p> <p>a) if all Parties as of the time of proposal of the amendment give written notice through diplomatic or other appropriate channels to the Party proposing the amendment of their consent to its adoption, the Party proposing the amendment shall so notify the Depository, which shall then prepare and transmit a certified copy of such amendment to all of the Parties for their acceptance; and</p> <p>b) an amendment so adopted shall enter into force for all Parties 30 days following the date on which the Depository has received written notification of acceptance from all of the Parties.</p>	<p><i>The second procedure envisions an amendment which is accepted by all the Parties when it is proposed, but goes into effect only after all Parties have ratified it.</i></p> <p><i>Depending on the Parties' initial reaction to a proposed amendment as well as its perceived urgency, Parties proposing an amendment to the Agreement can choose the option most likely to result in a prompt ratification.</i></p>

<p style="text-align: center;">Article _ Exceptions</p>	
<p style="text-align: center;">Traditional</p> <p>Any Party may refuse to authorize additional air services on any route it declares to be of national interest and on which the annual capacity offered does not exceed [an agreed number of seats].</p> <p style="text-align: center;">Transitional [Option 1 of 2]</p> <p>By a formal declaration made in writing to the other Parties, any Party shall have the option not to grant and receive the rights and obligations provided for in Article(s) _ for a transitional period not exceeding [agreed time frame].</p> <p style="text-align: center;">[Option 2 of 2]</p> <p>Notwithstanding the provisions in the Agreement, the Parties agree to apply the transitional measures set out in Annex _ (Transitional measures) for a period not exceeding [agreed time frame].</p> <p style="text-align: center;">Full liberalization</p> <p>In addition to the rights in the Agreement, the Parties to a Protocol to this Agreement also grant the rights for their designated airlines to perform:</p> <ul style="list-style-type: none">a) scheduled and charter international air transportation in passenger and combination services between the territory of the party granting the rights and any point or points; andb) scheduled and charter international air transportation between points in the territory of the Party granting the rights.	<p><i>A traditional approach provides an exception to the agreement which is not time limited. The traditional approach to Article _ (Capacity) also falls in this category.</i></p> <p><i>In contrast, a transitional exception is time-limited and may apply to some potential articles such as on Grant of rights, Capacity or Tariff. Therefore, the exemptions from the application of the agreement terminate at the end of the set transitional period. In the first option, a Party informs other Parties in writing that specific rights and obligations in the agreement will not be granted for a period of time.</i></p> <p><i>In this option, Parties agree to apply for a limited period of time some measures that they jointly determine in an annex to the agreement.</i></p> <p><i>A full liberalization exception in the form of a Protocol to the basic agreement, may provide additional rights, such as Seventh Freedom and limited cabotage, for those Parties willing to exchange them. Note that if the rights are in the agreement then a Protocol would not be needed. A Protocol would be used for those Parties wanting to go further than the whole group.</i></p>

<p style="text-align: center;">Article _ Existing agreements</p>	
<div style="text-align: center; border: 1px solid black; padding: 5px; margin: 10px auto; width: 150px;"> <p>Traditional</p> </div> <p>This Agreement shall not affect any bilateral, multilateral or other agreement or arrangements already in force between Parties or between a Party and a non-Party.</p> <div style="text-align: center; border: 1px solid black; padding: 5px; margin: 10px auto; width: 150px;"> <p>Transitional</p> </div> <p style="text-align: center;">[Option 1 of 2]</p> <p>This Agreement shall supersede any bilateral or multilateral air services agreement between the Parties to the extent that those agreements are incompatible with this Agreement.</p> <p style="text-align: center;">[Option 2 of 2]</p> <p>The provisions of this Agreement do not permit restrictions upon what is established in the air services agreements which the Parties have concluded between themselves.</p> <div style="text-align: center; border: 1px solid black; padding: 5px; margin: 10px auto; width: 150px;"> <p>Full liberalization</p> </div> <p>Upon entry into force of this Agreement between one Party and any other Party, any bilateral air services agreement existing between them at the time of such entry into force shall be superseded by this Agreement.</p>	<p><i>Parties need to decide what will be the relationship between the regional or plurilateral agreement and existing bilateral and other agreements 1) between Parties to the regional or plurilateral agreement, and 2) between Parties and non-Party States.</i></p> <p><i>The traditional approach recognizes all existing other agreements both between Parties and between Parties and non-Parties. In effect this subordinates the regional agreement to existing agreements.</i></p> <p><i>One transition approach allows provisions of existing agreement which are compatible with the regional agreement to remain in force, while those incompatible with it are superseded. This could raise questions as to which provisions of existing agreements fall in which category.</i></p> <p><i>Another transitional approach would tend to treat the flexibility of the regional agreement as a minimum level, with more flexible arrangements permitted in bilateral agreements between Parties.</i></p> <p><i>The full liberalization formulation simply replaces any existing bilateral agreements between Parties with the regional or plurilateral agreement. This prevents a dual system of agreements between and among Parties to the regional or plurilateral agreement (where some provisions of the bilateral continue in effect) and eliminates potential questions as to whether certain bilateral provisions are compatible or incompatible with the regional or plurilateral agreement.</i></p>

<p style="text-align: center;">Article _ Review</p>	
<p>1. The Agreement shall be subject to review every [number of years] in order to determine whether any amendments are required. An earlier review may take place if requested by [number of Parties] of the Parties.</p> <p>2. After consultation with the Parties, the Depository shall notify the Parties of the agreed date and the procedures for the review of the Agreement. Such notice should take place [number of days] days before the meeting.</p>	<p><i>This article provides the opportunity for a review to take place in order to assess the operation of the Agreement and decide if any amendments are needed to improve its effectiveness. Procedures for the review may be agreed by the Parties.</i></p>

<p>Article _ Withdrawal</p>	
<p>1. Any Party may withdraw from this Agreement by giving written notice of withdrawal to the Depository who shall within [agreed number of days] of receipt of the notification of withdrawal notify the other Parties.</p> <p>2. The withdrawal shall be effective 12 months after receipt of the notice by the Depository, unless the Party withdraws its notice by written communication to the Depository within the 12-month period.</p> <p>[3. If, as a result of withdrawals, the number of Parties to this Agreement is less than [an agreed number], this Agreement shall cease to be in force from the date on which the last of such withdrawals becomes effective.]</p>	<p><i>In the case of some regional agreements based on broader regional organizations, the notice of withdrawal is provided to an official or entity of the regional organization. A Party, for its own national interest, has the right to withdraw from the agreement by giving notice within a certain time frame.</i></p> <p><i>The optional text provides for situations where the withdrawal of a Party may render an agreement ineffective since some agreements may require a certain number of ratifications for the agreement to remain in force.</i></p>

<p style="text-align: center;">Article _ Depository</p>	
<p>1. The original of this Agreement shall be deposited with [the Party or regional entity agreed to], which shall be designated as the Depository of the Agreement.</p> <p>2. The Depository shall transmit certified copies of the Agreement to all Parties of the Agreement and to any States that may subsequently accede to the Agreement.</p> <p>3. Following entry into force of this Agreement, the Depository shall transmit a certified true copy of this Agreement to the Secretary General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations [and to the Secretary General of the International Civil Aviation Organization in accordance with Article 83 of the Convention.] The Depository shall likewise transmit certified true copies of any amendments which enter into force.</p> <p>4. The Depository shall make available to the Parties copies of any arbitral decision or award issued under Article _ (Settlement of disputes) of this Agreement.</p> <p>[5. The Depository shall maintain a centralized register of airline designations and operating authorizations in accordance with Article _ (Designation and authorization), paragraph 4 of this Agreement.]</p>	<p><i>Parties will need to designate a Depository who is responsible to transmit certified copies of this Agreement and any amendments or protocols to all signatory and acceding Parties.</i></p> <p><i>Notification to ICAO by the Depository may be covered in a separate Article on Registration with ICAO.</i></p> <p><i>An optional text should the Parties agree to maintain a centralized register of airline designations and operating authorizations.</i></p>

<p style="text-align: center;">Article _ Signature and ratification</p>	
<p>1. The Agreement shall be open for signature by the [Government of the Parties to the Agreement]</p> <p>2. The Agreement shall be subject to ratification. Instruments of ratification shall be deposited with the Depository.</p>	<p><i>This article follows usual practice for multilateral agreements where the agreement is to be open for signature by all governments which are listed. The signing could take place at any time, for example, at a meeting of Ministers, or subsequently by duly authorized representatives of those governments.</i></p> <p><i>To become a Party to the agreement, a Party government must then also ratify its decision in accordance with its own constitutional procedures. The documents recording ratification are to be deposited with the assigned Depository.</i></p>

<p style="text-align: center;">Article _ Accession</p>	
<p style="text-align: center;">Traditional</p> <p style="text-align: center;">[Option 1 of 2]</p> <p>This Agreement shall be open to accession by any Party of (name of regional organization).</p> <p style="text-align: center;">[Option 2 of 2]</p> <p>This Agreement shall be open to accession by other Parties in (description of region) subject to the approval of all Parties to the Agreement.</p> <p style="text-align: center;">Transitional</p> <p>1. This Agreement shall apply, on the one hand to the territories in which the (agreement creating the broader regional organization) is applied and under the conditions laid down in that (agreement) and on the other hand, to the territory of (name of State being included in agreement).</p> <p>2. The acceding Party shall deposit an appropriate instrument of accession with the Depository. The accession shall take effect on the date of the receipt of such Instrument with the Depository who shall transmit a certified copy to all Party.</p> <p style="text-align: center;">Full liberalization</p> <p>After this Agreement has entered into force any State which is a Party to the aviation security conventions listed in Article _ (Aviation security) may accede to this Agreement by deposit of an instrument of accession with the Depository.</p>	<p><i>The traditional approach to adding Parties to a regional or plurilateral agreement based on a broader regional organization is when new States are admitted to the organization.</i></p> <p><i>A traditional approach for regional agreements not based on a broader regional organization is to require unanimity of the existing Parties to allow other States in the region to become Parties to the agreement.</i></p> <p><i>A transitional approach is to negotiate an agreement for the inclusion of a State not a member of the broader regional organization in the regional air transport arrangement.</i></p> <p><i>With full liberalization, the agreement is open to any State which has ratified the aviation security conventions and therefore has the most flexible criteria for expansion of the agreement to other States.</i></p>

<p>Article _ Entry into force</p>	
<div style="text-align: center; border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <p>Traditional</p> </div> <p>This Agreement shall enter into force when all signatory Parties have deposited their instruments of ratification with the Depository.</p> <div style="text-align: center; border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <p>Transitional/ Full liberalization</p> </div> <ol style="list-style-type: none"> 1. This Agreement shall enter into force on the [agreed day] from the date of deposit of the [agreed number] instrument of ratification, and thereafter for each Party [number of days] days after the deposit of its instrument of ratification or accession. 2. The Depository shall inform each Party of the date of entry into force of this Agreement. 	<p><i>The traditional entry into force provision requires all Parties which have negotiated and/or signed the agreement to ratify it before it comes into force for any Party.</i></p> <p><i>Parties will need to agree on the date of deposit as well as the number of signatory States necessary to bring the agreement into force for those Parties ratifying it. Agreeing on the number of ratifications will have an impact on the speed with which the agreement enters into force. A reasonable compromise formula (for example 50 per cent of ratifications) will allow it to come into force relatively quickly.</i></p>

<p style="text-align: center;">Annex _ Transitional measures</p>	
<p>The following transitional measures shall expire on (date), or such earlier date as is agreed upon by the Parties:</p> <ol style="list-style-type: none"> 1. Notwithstanding the provisions of Article_ (or Annex_), the designated airline (or airlines) of Party A (or each Party) may (shall) 2. Notwithstanding the provisions of Article_ (or Annex_), the designated airline (or airlines) of Party A (or each Party) may (shall) as follows: <ol style="list-style-type: none"> a) From (date) through (date),; and b) From (date) through (date), 	<p><i>The Annex is an ICAO recommendation which addresses the issues of participation as well as sustainability in moving towards liberalization. It is drawn from existing practices and approaches covering both participation and preferential measures. It consists of one or more of three types of clauses. If these clauses apply to each Party in the same manner, then they would be considered to be participation measures. If not, then they would be regarded as preferential measures.</i></p> <p><i>The following is an indicative list of subjects that States may cover as transitional measures in the Annex: the number of designated airlines, ownership and control criteria, capacity and frequency, route and traffic rights, codesharing, charter operations, intermodal services, tariffs, slot allocation, and "doing business" matters such as ground handling. Any one of the subjects listed could be dealt with by any of the approaches set out in the three clauses. Doc 9587 contains material on possible participation and preferential measures.</i></p> <p><i>This clause is to be used when a particular Article (or Annex) would not take effect immediately but be implemented in a limited way during the transition period. By way of example, the Parties would agree that, notwithstanding the Annex on Route schedules granting each Party unlimited Fifth Freedom rights, the airline(s) of one Party (the developed State) would not be permitted to exercise those local traffic rights fully between the other Party (the developing State) and a third State until a specified date.</i></p> <p><i>This clause is similar to the first clause but with phase-in periods. For example, the Parties would agree that, notwithstanding an Article allowing unlimited codesharing, the airlines of each Party would be permitted to expand their third-country codeshare services (frequencies) only in a gradual manner for specified periods.</i></p>

Annex _ Transitional measures (cont'd)	
3. Notwithstanding the provisions of Article_ (or Annex_), the following provisions shall govern	<i>This clause is used when an Article (or Annex) would not take effect immediately and a different scheme would be applied during the transitional period. For example, the Parties would agree that, notwithstanding a tariff Article with no requirement for filing and approval of tariffs, a country-of-origin regime would govern pricing until a specific date.</i>

— END —