

**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)

**SUMMARY**

This paper presents two Template Air Services Agreements (TASAs) for the guidance and optional use (selectively, adapted or in full) by States in their air transport relationships, one for a bilateral situation and one for a regional or plurilateral situation. The application of the TASAs should enhance harmonization of the regulation of international air transport and global coordination of the ongoing process of liberalization.

Action by the Conference is in paragraph 5.1.

**REFERENCES**

Doc 9626, *Manual on the Regulation of International Air Transport*  
Doc 9587, *Policy and Guidance Material on the Economic Regulation of International Air Transport*  
Doc 9644, *Report on the World-wide Air Transport Conference on International Air Transport Regulation: Present and Future*

**1. INTRODUCTION**

1.1 Since the 1970s ICAO has actively developed model clauses for States to use at their discretion in their air services agreements. This work has been undertaken with the dual purpose of bringing some harmonization into the substance and language of certain clauses used in air services agreements while providing States with guidance for their bilateral relationships. States have generally found such work by ICAO to be useful and have continued to request additional work on model clauses.

1.2 Moreover, there have been significant developments in the air transport regulatory scene and in the industry since the last Worldwide Air Transport Conference (ATConf/4) in 1994. With regard to air services agreements, new provisions and different approaches have emerged with liberalization, and the spread of regional agreements has required adaptation of existing formulae to a different regulatory situation.

1.3 This paper presents two Template Air Services Agreements (TASAs), one for use in a bilateral situation and the other for use in a regional or plurilateral situation. The TASAs are comprehensive, covering all aspects normally or even occasionally found in an existing air services agreement. They are based primarily on the experiences of States and ICAO guidance material and have the objective of facilitating further the liberalization process by giving States a practical tool to enable them to meet the challenges and opportunities of liberalization. Their development and application also strengthen the role of ICAO in providing guidance to States in the process of liberalization of international air transport. Attachment A presents a TASA for States wishing to liberalize bilaterally and Attachment B a TASA for use in regional or plurilateral situations.

## **2. CONCEPT OF A TEMPLATE AIR SERVICES AGREEMENT**

2.1 Many States have now had a number of years of experience with progressive liberalization and have used ICAO guidance in a number of areas. In light of this experience with liberalization and in order to better assist all States in the liberalization process, there was a need to package and develop further the existing ICAO guidance in an expanded, more comprehensive and useful form.

2.2 One way to achieve this end was to provide States with a Template Air Services Agreement (TASA) for discretionary use. The TASAs developed by ICAO, and attached to this paper, have the following purposes:

- a) to provide a comprehensive framework air services agreement for States to use at their discretion in their air service relationships when liberalizing, specifying the most liberal provisions as well as transitional and traditional approaches whenever relevant. The TASAs will be “living documents” which will be modified over time as new provisions and new approaches emerge in air service relationships;
- b) to provide additional practical guidance by supplementing the text with explanatory notes and other material on the application of the provisions included in the TASA. Hence, the “living document” feature of the TASAs referred to above will also extend to their application. The further development of additional material, such as on the consequences of adopting particular approaches and the relationship between air services agreement provisions, would be primarily based on the experiences of States; and
- c) to serve as a “yardstick” to measure progress and changes in liberalization at bilateral or regional levels.

### 3. THE ICAO TEMPLATE AIR SERVICES AGREEMENTS

3.1 **Content.** The TASAs, as presented in Attachments A and B, provide a comprehensive text together with associated explanatory notes, and include wording options and alternative approaches to provisions that would normally be found in such air services agreements. They are based on model clauses or language developed by ICAO over the years on various air services agreement articles such as capacity, tariffs, competition laws, “doing business” and safety and aviation security provisions. The other source for the language in the provisions of the TASAs is the practice and usage of States in their agreements and the text for most of the provisions therefore represents a distillation of the most common and current usage by States in this field.

3.2 Most of the existing ICAO models that are referred to in the templates may be found in Doc 9587, *Policy and Guidance Material on the Economic Regulation of International Air Transport*, a compendium of ICAO conclusions, decisions and policy guidance in this field. However the TASA texts also include the draft models or Annexes proposed in the following ATConf/5 working papers: WP/7 (Ownership and control), WP/9 (Aircraft leasing), WP/10 (Air cargo), WP/11 (Safeguards), WP/12 (Sustainability and participation), WP/15 (Dispute resolution) and WP/16 (Transparency). In the event that these are modified by the Conference, the text in the TASAs would be changed accordingly.

3.3 With regard to coverage, the TASAs begin with the traditional approach to the operational and commercial rights of the designated airlines on such matters as grant of rights, designation and authorization, capacity, tariffs, fair competition and a number of related “doing business” activities while, at the other end of the spectrum, provide text for “full liberalization”. Between these two approaches are provisions presenting one or more transitional stages based on a variety of recent liberalization approaches, including some “open skies” formulations. In instances where there is no relevant transition from the traditional to full liberalization approach, either a single text is given (for example, Safety and Aviation security) or alternative texts (for example, certain administrative type provisions such as Application of laws).

3.4 The various options (such as an alternative wording or provision within an article) provided within any approach, in particular the transitional approach, are not presented in any order of progression or priority. States may not need to use all transitional approaches, or even any of them, in moving from a traditional to a full liberalization environment. This ability to choose different approaches for different provisions in a TASA would allow States to shape agreements which best fit their own pace and path for changes in market access and other aspects of liberalization. In addition, it could help them identify potential areas and formulae for liberalization by comparing their existing agreements with the TASA.

3.5 **Format.** The format of the document is the same for both the Bilateral TASA (Attachment A) and the Regional or Plurilateral TASA (Attachment B) and is arranged in two columns. The left column sets out the actual text of an Article or Annex in the agreement, including, if applicable, the different options and approaches (Traditional, Transitional and Full liberalization). The right column includes the explanatory notes that are either specific to the provision or to the article in general and which provide information on the use of a particular approach.

3.6 Most of the bilateral provisions in Attachment A can be adapted for regional or plurilateral use, for example by a change in wording (for example, “other Party” to “other Parties”). However, there are a number of important issues presented by regional or plurilateral agreements which are not present in a bilateral context and have therefore been included (for example, Articles on Exceptions and Existing Agreements).

3.7 The Bilateral TASA contained in Attachment A consists of a Preamble, thirty-nine Articles and four Annexes which, while not in any particular order of priority, follow the sequence of articles as they are commonly presented in a bilateral agreement. States, individually or bilaterally, may prefer other orders of presentation or agreement structure. As to the structure of the Regional or Plurilateral TASA contained in Attachment B, at present it only includes the provisions where there is a substantial difference in the text compared with Attachment A or contains a new provision necessitated by the regional or plurilateral context. However, a list has been produced at the beginning of the document of those provisions where only minor changes to the bilateral text is required (for example, Articles on Security of travel documents or Registration with ICAO). A comprehensive document, similar to Attachment A, will need to be further developed.

3.8 **Application and further development.** In the economic regulation of international air transport, ICAO has produced a large amount of current guidance material (such as Doc 9587 and Doc 9626, *Manual on the Regulation of International Air Transport*) which is available for use by States. In a similar manner, the TASAs (Attachments A and B) could provide the basis for additional guidance material in the form of a manual or compendium to the TASAs. In undertaking this future work, it would be useful for ICAO to monitor closely liberalization developments; assist States in the use and application of the TASAs; collect and keep current the TASAs, including existing and new guidance; and disseminate information on the TASAs and their application to States.

3.9 Notwithstanding the conclusion in ATConf/5-WP/8 on Market access that conditions are not ripe at this stage for a global multilateral agreement, multilateralism remains a long standing and long term objective of ICAO. Whereas the TASAs are a bilateral and regional tool for States in the liberalization process, now and for the foreseeable future, they may, nevertheless, over time bring sufficient harmonization of language and approach to serve as a building block towards the multilateral objective.

3.10 **Review by the Conference.** The TASAs are an ongoing project that will continue to be subject of further refinement and improvement, particularly as to their usefulness and application. At this stage of development, it would be valuable to obtain the views and comments of the Conference particularly on the concept as presented in this paper as well as the ideas for its future enhancement. The Conference is not expected to review or endorse the text in Attachments A and B but rather undertake a review of the concept, in general terms, for the guidance of the Council regarding further development and application of the templates. However, any comments by the Conference or subsequent feedback by States on the text or explanatory notes, or on the presentation or content will be taken into account.

## 4. CONCLUSIONS

4.1 From the above discussions, the following conclusions may be drawn:

- a) in actively promoting its role in developing policy guidance for States on the economic regulation of international air transport, ICAO's development of the TASAs in Attachments A and B of this paper is intended to facilitate the liberalization process;
- b) the Template Air Services Agreements provide practical source documents for liberalization for States to use at their discretion in their air services relationships as well as in the development of their approaches and options in liberalization, serving as a useful tool in the liberalization process. The TASAs are "living documents" that should continue to be developed, particularly regarding additional material as to their application, in order to provide comprehensive guidance to States to facilitate

liberalization and improve the harmonization of air services agreements in terms of language and approach;

- c) States should be encouraged to use the TASAs in their bilateral, regional or plurilateral relationships and to provide feedback to ICAO on the use of the TASAs; and
- d) ICAO should continue to monitor closely the regulatory experiences of States and regions in liberalization and in the use of the TASA. It should disseminate to States relevant information on these developments and provide assistance on the use and application of the TASAs.

## 5. **ACTION BY THE CONFERENCE**

5.1 The Conference is invited to:

- a) note the information on the Template Air Services Agreements in paragraphs 2 and 3, and review and provide comments on the concept of the TASAs, including their further development and application; and
- b) review and adopt the conclusions in paragraph 4.1.

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**ATTACHMENT A**

**BILATERAL TEMPLATE AIR SERVICES AGREEMENT**

*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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<b>Preamble</b>	
<b>[Option 1 of 2]</b>	
<p>The Government of .... and the Government of .... hereinafter referred to as the “Parties”;</p> <p>Being parties to the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944;</p> <p>Desiring to contribute to the progress of regional and international civil aviation;</p> <p>Desiring to conclude an agreement for the purpose of establishing and operating air services between and beyond their respective territories;</p> <p>Have agreed as follows:</p>	<p><i>The initial part of the agreement presents the reason for entering into the agreement and declares that they have agreed to what will follow in subsequent parts of the agreement.</i></p>
<b>[Option 2 of 2]</b>	
<p>The Government of .... and the Government of.... (hereinafter, “the Parties”);</p> <p>Being Parties to the Convention on International Civil Aviation, opened for signature at Chicago on 7 December, 1944;</p> <p>Desiring to promote an international aviation system based on competition among airlines in the marketplace with minimum government interference and regulation;</p> <p>Desiring to facilitate the expansion of international air services opportunities;</p> <p>Recognising the efficient and competitive international air services enhance trade, the welfare of consumers, and economic growth;</p> <p>Desiring to make it possible for airlines to offer the travelling and shipping public a variety of service options [at the lowest prices that are not discriminatory and do not represent abuse of a dominant position], and wishing to encourage individual airlines to develop and implement innovative and competitive prices; and</p>	<p><i>This approach is common in more liberal agreements and the bracketed text is common to “open skies” agreements.</i></p>

<b>Preamble (cont'd)</b>	
<p>Desiring to ensure the highest degree of safety and security in international air services and reaffirming their grave concern about acts or threats against the security of aircraft, which jeopardise the safety of persons or property, adversely affect the operation of air services, and undermine public confidence in the safety of civil aviation.</p> <p>Have agreed as follows:</p>	

<b>Article 1 Definitions</b>	
<p>For the purposes of this Agreement, unless otherwise stated, the term:</p> <p>a) “air transportation” means the public carriage by aircraft of passengers, baggage, cargo and mail, separately or in combination, for remuneration or hire;</p> <p>b) “aeronautical authorities ” means, in the case of _ the _; in the case of _ the _ ; or in both cases any other authority or person empowered to perform the functions now exercised by the said authorities;</p> <p>c) “Agreement” means this Agreement, its Annex, and any amendments thereto;</p> <p>d) “capacity” is the amount(s) of services provided under the agreement, usually measured in the number of flights (frequencies) or seats or tons of cargo offered in a market (city pair, or country-to-country) or on a route during a specific period, such as daily, weekly, seasonally or annually;</p> <p>e) “Convention” means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, 1944, and includes any Annex adopted under Article 90 of that Convention, and any amendment of the Annexes or Convention under Articles 90 and 94, insofar as such Annexes and amendments have become effective for both Parties;</p> <p>f) “designated airline” means an airline which has been designated and authorised in accordance with Article _ of this Agreement;</p> <p>g) “domestic air transportation” is air transportation in which passengers, baggage, cargo and mail which are taken on board in a States territory are destined to another point in that same State’s territory;</p>	<p><i>While the Parties to an air services agreement may choose to define any number of terms used in their agreement, for the purposes of clarity or in the event of any possible ambiguity, the foregoing are the terms most commonly found in a Definitions article.</i></p> <p><i>For “aeronautical authorities” the required insertions will depend on the prevailing administrative structures and arrangements in place in each Party.</i></p>



<b>Article 1</b> <b>Definitions (cont'd)</b>	
o) “air service”, “international air service”, “airline”, and “stop for non-traffic purposes”, have the meanings assigned to them in Article 96 of the Convention.	

**Article 2**  
**Grant of rights**

1.\* Each Party grants to the other Party the rights specified in this Agreement for the purpose of operating international air services on the routes specified in the Route Schedule.

2.\* Subject to the provisions of this Agreement, the airline(s) designated by each Party shall enjoy the following rights:

- a)\* the right to fly without landing across the territory of the other Party;
- b)\* the right to make stops in the territory of the other Party for non-traffic purposes;

**Traditional**

c) the right to make stops at the point(s) on the route(s) specified in the Route Schedule to this Agreement for the purpose of taking on board and discharging international traffic in passengers, cargo or mail [separately or in combination].

**Transitional and Full liberalization**

c) the rights otherwise specified in this Agreement.

3.\* The airlines of each Party, other than those designated under Article (Designation) of this Agreement, shall also enjoy the rights specified in paragraphs 2 a) and b) of this Article.

*The Grant of rights provision sets out both the traffic and non-traffic rights the Parties grant to each other and usually needs to be read in conjunction with a schedule or annex that sets out the routes, rights and any applicable conditions.*

*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 bilateral and regional/plurilateral agreements, either because some States may not be, or may cease to be, parties to the IASTA.*

*This provision exchanges the other traffic rights on the basis of the Route schedule. It is not necessary to distinguish among the Third, Fourth and Fifth Freedoms in the Grant of rights Article since the Route schedule will establish the routes and points for which the specific freedoms apply. One phrase “separately or in combination” is bracketed as being optional since its insertion would enable the operation of all-cargo services. However, these could also be the subject of separate treatment and negotiation between the Parties, including specified routes.*

*Traffic rights in liberal agreements are exchanged using this formulation, in particular, “open skies” agreements. The Route schedule will, by its presentation and wording, establish the various “freedoms of the air” as well as the routes which may specify points to be exchanged.*

*The use of the term “airlines of each Party” includes both airlines which are designated and those which are not.*

<b>Article 2</b> <b>Grant of rights (cont'd)</b>	
4.* Nothing in paragraph 2 shall be deemed to confer on the designated airline(s) of one Party the privilege of taking on board, in the territory of the other Party, passengers, cargo and mail for remuneration and destined for another point in the territory of the other Party.	<i>A standard provision that excludes cabotage operations from the grant of rights. In the few bilateral instances where cabotage rights have been exchanged, this has been done in the context of the Route schedule.</i>

**Article 3**  
**Designation and authorization**

**Traditional**

1. Each Party shall have the right to designate in writing to the other Party an airline to operate the agreed services [in accordance with this Agreement] and to withdraw or alter such designation.

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:

a) substantial ownership and effective control are vested in the Party designating the airline, nationals of that Party, or both;

b)\* the Party designating the airline is in compliance with the provisions set forth in Article \_ (Safety) and Article \_ (Aviation Security); and

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 receiving the designation.

*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.*

*The traditional approach refers to one airline or a single designation.*

*The traditional “substantial ownership and effective control” formula is still used in the majority of bilateral agreements. The phrase is not defined and the authorizing Party is the sole judge of whether the ownership and control criteria have been met. Nevertheless, “substantial ownership” is broadly considered to mean more than 50 per cent equity ownership. On the other hand States take varying views in their domestic legislation or practice as to what might constitute “effective control”. With the traditional clause, there have been individual instances where the authorizing Party has waived its right to require that the ownership and control criteria be met.*

*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”.*

<b>Article 3</b>	
<b>Designation and authorization (cont'd)</b>	
<p style="text-align: center;"><b>Traditional</b> (cont'd)</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>	
<div style="border: 1px solid black; padding: 5px; display: inline-block;"><b>Transitional</b></div>	
<p>1. Each Party shall have the right to designate in writing to the other Party one or more airlines to operate the agreed services [in accordance with this Agreement] and to withdraw or alter such designation.</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 style="padding-left: 40px;"><b>[Sub-paragraphs 2a) through 2 c)*, option 1 of 2]</b></p> <p>a) the airline is and remains substantially owned and effectively controlled by nationals of any one or more States in a group, or by any one or more of the Parties themselves;</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><i>This approach uses the recommendation of the 1994 World-wide Air Transport Conference (ATConf/4) which refers to an airline which is and remains substantially owned and effectively controlled by nationals of one or more States that are not necessarily party to the agreement concerned but are within a predefined group with a “community of interest”. A second group formulation by ATConf/4 is an airline which is substantially owned and effectively controlled by nationals of any one or more States that are parties to an agreement, or any one or more of the parties themselves. The definition of a European Union (EU) air carrier is an example of this ownership and control within a group (the EU criteria also includes principle place of business and administrative headquarters in a Member State).</i></p>

<b>Article 3</b>	
<b>Designation and authorization (cont'd)</b>	
<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 style="text-align: center;"><b>Transitional (cont'd)</b></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 receiving the designation.</p> <p style="text-align: center;"><b>[Sub-paragraphs a) through d)*, option 2 of 2]</b></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><i>This approach recommended by ICAO would enable a State to designate air carriers as it sees qualified (including those with majority national ownership) to use and benefit from its entitled market access rights under a bilateral agreement. At the same time, it would reinforce the obligation on the part of the designating party to maintain effective regulatory control (including safety and security oversight) over the airline it designates. 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>

<b>Article 3</b>	
<b>Designation and authorization (cont'd)</b>	
<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 style="text-align: center;"><b>Transitional (cont'd)</b></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 receiving the designation.</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> <div style="text-align: center; border: 1px solid black; padding: 5px; width: fit-content; margin: 10px auto;"><b>Full liberalization</b></div> <p>1. Each Party shall have the right to designate in writing to the other Party as many airlines as it wishes to operate the agreed services [in accordance with this Agreement] and to withdraw or alter such designation.</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>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 style="text-align: center;"><b>Article 3</b> <b>Designation and authorization (cont'd)</b></p>	
<p>a) the airline is under the effective regulatory control of the designating State;</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 receiving the designation.</p> <p style="text-align: center;"><b>Full liberalization (cont'd)</b></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><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>

<b>Article 4</b> <b>Withholding, revocation and limitation of authorization</b>	
<p>1.* The aeronautical authorities of each Party shall have the right to withhold the authorizations referred to in Article (Authorization) of this Agreement with respect to an airline designated by the other Party, and to revoke, suspend or impose conditions on such authorizations, temporarily or permanently:</p> <p style="text-align: center;"><b>Traditional</b></p> <p>a) in the event that they are not satisfied that substantial ownership and effective control are vested in the Party designating the airline, nationals of that Party, 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;"><b>Transitional</b></p> <p>[Sub-paragraphs a) through c)*, option 1 of 2]</p> <p>a) in the event that they are not satisfied that the airline is and remains substantially owned and effectively controlled by nationals of any one or more States in a group, or by any one or more of the Parties themselves;</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><i>The reasons for a State 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 “substantial ownership and effective control” 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.</i></p>

<p><b>Article 4</b>  <b>Withholding, revocation and limitation of authorization (cont'd)</b></p>	
<p><b>Transitional (cont'd)</b>  <b>[Sub-paragraphs a) through d)*, option 2 of 2]</b></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>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><b>Article 4</b>  <b>Withholding, revocation and limitation of authorization (cont'd)</b></p>		
<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td data-bbox="321 310 667 359" style="text-align: center;"> <p><b>Full liberalization</b></p> </td> </tr> </table> <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 style="text-align: center;"><b>Full liberalization (cont'd)</b></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>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 Articles (Safety) or (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><b>Full liberalization</b></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><b>Full liberalization</b></p>		

<b>Article 5</b> <b>Application of laws</b>	
<p style="text-align: center;"><b>[Paragraph 1, option 1 of 2]</b></p> <p>1. The laws and regulations of one Party governing entry into and departure from its territory of aircraft engaged in international air services, or the operation and navigation of such aircraft while within its territory, shall be applied to aircraft of the designated airline of the other Party.</p> <p style="text-align: center;"><b>[Paragraph 1, option 2 of 2]</b></p> <p>1. While entering, within, or leaving the territory of one Party, its laws and regulations relating to the operation and navigation of aircraft shall be complied with by the other Party's airlines.</p> <p style="text-align: center;"><b>[Paragraph 2, option 1 of 2]</b></p> <p>2. The laws and regulations of one Party relating to the entry into, stay in and departure from its territory of passengers, crew and cargo including mail such as those regarding immigration, customs, currency and health and quarantine shall apply to passengers, crew, cargo and mail carried by the aircraft of the designated airline of the other Party while they are within the said territory.</p> <p style="text-align: center;"><b>[Paragraph 2, option 2 of 2]</b></p> <p>2. While entering, within, or leaving the territory of one Party, its laws and regulations relating to the admission to or departure from its territory of passengers, crew or cargo on aircraft (including regulations relating to entry, clearance, aviation security, immigration, passports, customs and quarantine, or in the case of mail, postal regulations) shall be complied with by, or on behalf of, such passengers, crew or cargo of the other Party's airlines.</p>	<p><i>This Article is found in most bilateral agreements and reproduces the substance of Article 11 of the Convention. There is a general commitment by the Parties to use ICAO Standards and Recommended Practices (SARPs) concerning facilitation. The Article on “Inadmissible and undocumented passengers and deportees” contains a more specific commitment concerning Annex 9 procedures.</i></p> <p><i>Under the first alternative, paragraph 1 recognizes that a Party's laws with respect to the operation of aircraft and admission of passengers, crew, cargo and mail will be applied to the other Party's airlines.</i></p> <p><i>Under the second alternative, paragraph 1 shifts the emphasis to compliance by airlines with a Party's laws on operation and navigation of aircraft and the admission, transit and departure of passengers, crew, cargo and mail.</i></p> <p><i>Paragraph 2 focuses on the application of, which is to say, compliance with those laws and regulations related to customs, immigration, currency, health and quarantine of the other Party.</i></p> <p><i>Paragraph 2 focuses on the application of, which is to say, compliance with those laws and regulations related to customs, immigration, currency, health and quarantine of the other Party.</i></p>

<b>Article 5</b> <b>Application of laws (cont'd)</b>	
3.* Neither Party shall give preference to its own or any other airline over a designated airline of the other Party engaged in similar international air transportation in the application of its immigration, customs, quarantine and similar regulations.	<i>Paragraph 3 is common to both alternatives and addresses non-discrimination.</i>

<p style="text-align: center;"><b>Article 6</b> <b>Direct transit</b></p>	
<p>Passengers, baggage, cargo and mail in direct transit shall be subject to no more than a simplified control. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes.</p>	<p><i>This Article is a standard facilitation measure for simplified transit found in most recent air services agreements. It could be stated separately or included in the Application of laws Article.</i></p>

<b>Article 7</b> <b>Recognition of certificates</b>	
<p>1. Certificates of airworthiness, certificates of competency and licenses issued or rendered valid by one Party and still in force shall be recognised as valid by the other Party for the purpose of operating the agreed services provided that the requirements under which such certificates and licenses were issued or rendered valid are equal to or above the minimum standards which may be established pursuant to the Convention.</p>	<p><i>This provision on Recognition of Certificates is found in most air service agreements even though, in essence, it simply reproduces in paragraphs 1 and 2 two provisions of the Convention, Articles 33 and 32 b) respectively, with some minor variations in wording.</i></p>
<p>2. If the privileges or conditions of the licences or certificates referred to in paragraph 1 above, issued by the aeronautical authorities of one Party to any person or designated airline or in respect of an aircraft used in the operation of the agreed services, should permit a difference from the minimum standards established under the Convention, and which difference has been filed with the International Civil Aviation Organization, the other Party may request consultations between the aeronautical authorities with a view to clarifying the practice in question.</p>	<p><i>In paragraph 1, the Parties exchange mutual recognition of currently valid certificates of airworthiness and competency and licenses issued by the other Party.</i></p> <p><i>States may find it useful to have a procedure to deal with differences filed with respect to the standards established pursuant to the Convention.</i></p>
<p>3. Each Party reserves the right, however, to refuse to recognise for the purpose of flights above or landing within its own territory, certificates of competency and licenses granted to its own nationals by the other Party.</p>	<p><i>This provision reserves the right to refuse to recognise any certificates or licenses issued by the other Party to the first Party's nationals. Drawn from Article 32 b) of the Convention, the provision is necessary because Article 32 a) requires pilots to be provided with licenses issued by the State of registry of the aircraft. Consequently, it is not possible for the recognition to extend to a license issued to that State's own nationals by another State.</i></p>

## Article 8 Safety

1. Each Party may request consultations at any time concerning the safety standards maintained by the other Party in areas relating to aeronautical facilities, flight crew, aircraft and the operation of aircraft. Such consultations shall take place within thirty days of that request.

2. If, following such consultations, one Party finds that the other Party does not effectively maintain and administer safety standards in the areas referred to in paragraph 1 that meet the Standards established at that time pursuant to the *Convention on International Civil Aviation* (Doc 7300), the other Party shall be informed of such findings and of the steps considered necessary to conform with the ICAO Standards. The other Party shall then take appropriate corrective action within an agreed time period.

3. Pursuant to Article 16 of the Convention, it is further agreed that, any aircraft operated by, or on behalf of an airline of one Party, on service to or from the territory of another Party, may, while within the territory of the other Party be the subject of a search by the authorized representatives of the other Party, provided this does not cause unreasonable delay in the operation of the aircraft. Notwithstanding the obligations mentioned in Article 33 of the Chicago Convention, the purpose of this search is to verify the validity of the relevant aircraft documentation, the licensing of its crew, and that the aircraft equipment and the condition of the aircraft conform to the Standards established at that time pursuant to the Convention.

*The foregoing model clause on safety developed by ICAO provides a standardized process for Parties to an agreement to address safety concerns. It is intended to ensure that aircraft operated by, or on behalf of, designated airlines in the other Party's territory are operated and maintained in accordance with ICAO Standards and Recommended Practices. The provision takes a wide view of an aircraft operation by including aeronautical facilities, which implies the provision of facilities such as air traffic control, airport and navigational aids, in addition to the aircraft and its crew.*

*However, nothing prevents the Parties from inserting additional or more restrictive criteria that they feel may be necessary for assessing the safety of an aircraft operation, such as the alternative wording for ramp inspection which specifies the findings and determinations that can be made by aeronautical authorities following a ramp inspection, and additionally addresses the situation where there is a denial of access for a ramp inspection.*

<b>Article 8 Safety (cont'd)</b>	
<p>4. When urgent action is essential to ensure the safety of an airline operation, each Party reserves the right to immediately suspend or vary the operating authorization of an airline or airlines of the other Party.</p> <p>5. Any action by one Party in accordance with paragraph 4 above shall be discontinued once the basis for the taking of that action ceases to exist.</p> <p>6. With reference to paragraph 2, if it is determined that one Party remains in non-compliance with ICAO Standards when the agreed time period has lapsed, the Secretary General of ICAO should be advised thereof. The latter should also be advised of the subsequent satisfactory resolution of the situation.</p>	<p><i>Except for this provision, there is no specific reference to sanctions in the Safety Article in view of the possibility of taking action under the Revocation provision to revoke, suspend or impose conditions on a designated airlines authorization for failing to comply with, inter alia, the Safety Article.</i></p>

**Article 9**  
**Aviation security**

1. Consistent with their rights and obligations under international law, the Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Parties shall in particular act in conformity with the provisions of the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970 and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971, its Supplementary Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on 24 February 1988 as well as with any other convention and protocol relating to the security of civil aviation which both Parties adhere to.

2. The Parties shall provide upon request all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.

3. The Parties shall, in their mutual relations, act in conformity with the aviation security provisions established by ICAO and designated as Annexes to the Convention; they shall require that operators of aircraft of their registry or operators of aircraft who have their principal place of business or permanent residence in their territory and the operators of airports in their territory act in conformity with such aviation security provisions. [Each Party shall advise the other Party of any difference between its national regulations and practices and the aviation security standards of the Annexes. Either Party may request immediate consultations with the other Party at any time to discuss any such differences.]

*The provision on aviation security was developed by ICAO. It incorporates by general reference, in paragraphs 1 and 3 respectively, obligations on aviation security arising from the various international instruments on unlawful interference to which the Parties may be signatories, and to Annex 17 on Aviation Security in the Convention, which applies to all Contracting States of ICAO. Any changes to the Standards and Recommended Practices of the latter which may come into effect subsequent to the adoption of the agreement would also apply to the Parties. The clause emphasises mutual assistance in the prevention of unlawful seizure or other such acts, requests for special security measures and whenever there is an unlawful act or the threat of one. The clause does not limit the contractual freedom of Parties to expand or limit its scope or to use a different approach.*

*The bracketed language in paragraph 3 provides a procedure for handling differences which could be filed for security standards.*

**Article 9**  
**Aviation security (cont'd)**

4. Each Party agrees that such operators of aircraft may be required to observe the aviation security provisions referred to in paragraph 3) above required by the other Party for entry into, departure from, or while within, the territory of that other Party. Each Party shall ensure that adequate measures are effectively applied within its territory to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. Each Party shall also give sympathetic consideration to any request from the other Party for reasonable special security measures to meet a particular threat.

5. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of such aircraft, their passengers and crew, airports or air navigation facilities occurs, the Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat thereof.

[6. Each Party shall have the right, within sixty (60) days following notice (or such shorter period as may be agreed between the aeronautical authorities), for its aeronautical authorities to conduct an assessment in the territory of the other Party of the security measures being carried out, or planned to be carried out, by aircraft operators in respect of flights arriving from, or departing to the territory of the first Party. The administrative arrangements for the conduct of such assessments shall be agreed between the aeronautical authorities and implemented without delay so as to ensure that assessments will be conducted expeditiously.]

*The alternative paragraphs 6 and 7 address, respectively, the inspection of security facilities and procedures in the other Party's territory and the need for prompt consultations on security matters (which have greater urgency than consultation on other issues) as well as the ability to take interim action when warranted.*

<b>Article 9</b> <b>Aviation security (cont'd)</b>	
<p>[7. When a Party has reasonable grounds to believe that the other Party has departed from the provisions of this Article, the first Party may request consultations. Such consultations shall start within fifteen (15) days of receipt of such a request from either Party. Failure to reach a satisfactory agreement within fifteen (15) days from the start of consultations shall constitute grounds for withholding, revoking, suspending or imposing conditions on the authorizations of the airline or airlines designated by the other Party. When justified by an emergency, or to prevent further non-compliance with the provisions of this Article, the first Party may take interim action at any time.]</p>	

<b>Article 10</b> <b>Security of travel documents</b>	
<p>1. Each Party agrees to adopt measures to ensure the security of their passports and other travel documents.</p> <p>2. In this regard, each Party agrees to establish controls on the lawful creation, issuance, verification and use of passports and other travel documents and identity documents issued by, or on behalf of, that Party.</p> <p>3. Each Party also agrees to establish or improve procedures to ensure that travel and identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be unlawfully altered, replicated or issued.</p> <p>4. Pursuant to the objectives above, each Party shall issue their passports and other travel documents in accordance with ICAO Doc 9303, <i>Machine Readable Travel Documents: Part 1 – Machine Readable Passports, Part 2 – Machine Readable Visas, and/or Part 3 – Size 1 and Size 2 Machine Readable Official Travel Documents.</i></p> <p>5. Each Party further agrees to exchange operational information regarding forged or counterfeit travel documents, and to cooperate with the other to strengthen resistance to travel document fraud, including the forgery or counterfeiting of travel documents, the use of forged or counterfeit travel documents, the use of valid travel documents by imposters, the misuse of authentic travel documents by rightful holders in furtherance of the commission of an offence, the use of expired or revoked travel documents, and the use of fraudulently obtained travel documents.</p>	<p><i>ICAO's Machine Readable Travel Document's technical specifications, contained in ICAO Doc 9303, permit reliable verification of the authenticity of travel documents and their holders and provide strong safeguards against alteration, forgery or counterfeit. Nearly 100 Contracting States issue Machine Readable Passports and other Machine Readable Travel Documents, in accordance with the specifications in Doc 9303. ICAO's Resolutions recognize that Doc 9303 specifications not only are effective in accelerating the movement of international passengers and crew members through border control, they also enhance security and immigration compliance programmes. Resolutions of the United Nations (UN) Security Council and other bodies of the UN, call upon States to enhance international cooperation to combat the smuggling of aliens and to prevent the use of fraudulent documents.</i></p> <p><i>Inclusion of this Article in air services agreements would enhance international efforts, by States, against the use of fraudulent and counterfeit travel documents for illegal migration, the smuggling of migrants and the movement of terrorists or terrorist groups across borders.</i></p>

<b>Article 11</b> <b>Inadmissible and undocumented passengers and deportees</b>	
<ol style="list-style-type: none"> <li>1. Each Party agrees to establish effective border controls.</li> <li>2. In this regard, each Party agrees to implement the Standards and Recommended Practices of Annex 9 (Facilitation) to the Chicago Convention concerning inadmissible and undocumented passengers and deportees in order to enhance cooperation to combat illegal migration.</li> <li>3. Pursuant to the objectives above, each Party agrees to issue, or to accept, as the case may be, the letter relating to "fraudulent, falsified or counterfeit travel documents or genuine documents presented by imposters" set out in Appendix 9 b) to Annex 9, when taking action under relevant paragraphs of Chapter 3 of the Annex regarding the seizure of fraudulent, falsified or counterfeit travel documents.</li> </ol>	<p><i>Chapter 3 of Annex 9 (Facilitation) to the Chicago Convention includes Standards and Recommended Practices setting out general procedures to be followed by States and airlines when dealing with inadmissible passengers, undocumented passengers and deportees. Appendix 9 is intended to replace, as a travel document, fraudulent, falsified or counterfeit travel documents seized from passengers who have used them for travel. The idea behind existing paragraphs and Appendix 9 is to remove, from circulation, fraudulent, falsified and counterfeit documents.</i></p> <p><i>Inclusion of this Article paragraphs in air services agreements would enhance international efforts, by States, against the smuggling of migrants and the movement of terrorists or terrorist groups across borders.</i></p>

<b>Article 12 User charges</b>	
<p style="text-align: center;"><b>[Paragraphs 1 and 2, option 1 of 2]</b></p> <p>1. Neither Party shall impose or permit to be imposed on the designated airlines of the other Party user charges higher than those imposed on its own airlines operating similar international services.</p> <p>2. Each Party shall encourage consultations on user charges between its competent charging authority [or airport or air navigation service provider] and airlines using the service and facilities provided by those charging authorities [or service provider], where practicable through those airlines' representative organisations. Reasonable notice of any proposals for changes in user charges should be given to such users to enable them to express their views before changes are made. Each Party shall further encourage its competent charging authority [or service provider] and such users to exchange appropriate information concerning user charges.</p> <p style="text-align: center;"><b>[Paragraphs 1 and 2, option 2 of 2]</b></p> <p>1. User charges that may be imposed by the competent charging authorities or bodies of each Party on the airlines of the other Party shall be just, reasonable, not unjustly discriminatory, and equitably apportioned among categories of users. In any event, any such user charges shall be assessed on the airlines of the other Party on terms not less favourable than the most favourable terms available to any other airline at the time the charges are assessed.</p>	<p><i>These two alternative approaches to a provision on user charges differ significantly. Some provisions refer to "designated airlines." Parties would need to consider whether the provisions on the activities contained in this Part should also be extended to all airlines of a Party rather than only designated ones.</i></p> <p><i>This alternative is less detailed and merely reproduces in the first paragraph the non-discrimination principle governing user charges in Article 15 of the Convention viz. that charges on a foreign aircraft shall be no higher than those that would be imposed on its own aircraft in similar international operations.</i></p> <p><i>The provision encourages consultation between the charging authority and the users, that reasonable notice is given for any changes in charges and that appropriate information is exchanged concerning charges. These principles reflect ICAO policy on charges (Doc 9082). Because some States have commercialized or privatized their airport and air navigation service providers, and have delegated authority to set user charges, suitable wording in brackets is added to address such situations.</i></p> <p><i>In the second alternative, this provision includes certain principles which again reflect ICAO-developed policy. However, rather than use the formula from Article 15 of the Convention, as is done in the first alternative, this version applies a type of "most favoured nation" provision which is broader in application than Article 15.</i></p>

**Article 12**  
**User charges (cont'd)**

[Paragraphs 1 and 2, option 2 of 2] (cont'd)

2. User charges imposed on the airlines of the other Party may reflect, but shall not exceed, the full cost to the competent charging authorities or bodies of providing the appropriate airport, airport environmental, air navigation, and aviation security facilities and services at the airport or within the airport system. Such full costs may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis.

3. Each Party shall encourage consultations between the competent charging authorities or bodies in its territory and the airlines using the services and facilities, and shall encourage the competent authorities or bodies and the airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles in paragraphs 1 and 2. Each Party shall encourage the competent charging authorities to provide users with reasonable notice of any proposal for changes in user charges to enable users to express their views before changes are made.

4. Neither Party shall be held, in dispute resolution procedures pursuant to Article \_ (Settlement of Disputes), to be in breach of a provision of this Article, unless:

- a) it fails to undertake a review of the charge or practice that is the subject of complaint by the other Party within a reasonable amount of time; or
- b) following such a review it fails to take all steps within its power to remedy any charge or practice that is inconsistent with this Article.

[5. Airports, airways, air traffic control and air navigation services, aviation security, and other related facilities and services that are provided in the territory of one Party shall be available for use by the airlines of the other Party on terms no less favourable than the most favourable terms available to any airline engaged in similar international air services at the time arrangements for use are made.]

*Certain ICAO cost recovery principles are set out in this provision.*

*There are similar requirements regarding consultations, exchange of information and reasonable notice as can be found in the first alternative.*

*The second approach introduces a review process prior to any treatment of user charges within the dispute settlement framework, and indicates that there is no breach of the Article, for purposes of the dispute settlement mechanism, if that review process is undertaken.*

*The bracketed language is essentially a more detailed version of Article 15 of the Convention.*

**Article 13**  
**Customs duties**

1. Each Party shall on the basis of reciprocity exempt a designated airline of the other Party to the fullest extent possible under its national law from [import restrictions,] customs duties, excise taxes, inspection fees and other national duties and charges [not based on the cost of services provided on arrival,] on aircraft, fuel, lubricating oils, consumable technical supplies, spare parts including engines, regular aircraft equipment, aircraft stores and other items [such as printed ticket stock, air waybills, any printed material which bears the insignia of the company printed thereon and usual publicity material distributed free of charge by that designated airline] intended for use or used solely in connection with the operation or servicing of aircraft of the designated airline of such other Party operating the agreed services.

2. The exemptions granted by this article shall apply to the items referred to in paragraph 1:

a) introduced into the territory of the Party by or on behalf of the designated airline of the other Party;

b) retained on board aircraft of the designated airline of one Party upon arrival in or leaving the territory of the other Party; or

c) taken on board aircraft of the designated airline of one Party in the territory of the other Party and intended for use in operating the agreed services;

whether or not such items are used or consumed wholly within the territory of the Party granting the exemption, provided the ownership of such items is not transferred in the territory of the said Party.

3. The regular airborne equipment, as well as the materials and supplies normally retained on board the aircraft of a designated airline of either Party, may be unloaded in the territory of the other Party only with the approval of the customs authorities of that territory. In such case, they may be placed under the supervision of the said authorities up to such time as they are re-exported or otherwise disposed of in accordance with customs regulations.

*A provision on customs and other duties is to be found in nearly all air services agreements and supplements the exemption on fuel, lubricating oils, spare parts, regular equipment and aircraft stores retained on board on arrival in another State's territory, found in Article 24 of the Convention. It also reflects ICAO policies on the taxation of international air transport (Doc 8632). The purpose of the provision is to exempt international aviation operations from various customs duties and other taxes on fuel, spare parts, supplies and equipment, that would normally be applied to a foreign aircraft when operating in another jurisdiction. The nature of international air transport and the potentially adverse economic impact of such imposts have been the rationale for the almost global acceptance of this provision.*

*In some situations the exemption is not a blanket exemption from all taxes and charges and where, for instance, there are government imposed charges for services provided to international air transport (eg customs and quarantine fees), then the agreement would need a qualifying statement such as: "not based on the cost of services provided on arrival". Other items that could be covered (but have not been inserted in this Article) are equipment used for reservations and operations, security equipment, cargo loading and passenger handling equipment, instructional material and training aids.*

**Article 14  
Taxation**

**[Paragraphs 1 through 3, option 1 of 2]**

1. Profits from the operation of the aircraft of a designated airline in international traffic shall be taxable only in the territory of the Party in which the place of effective management of that airline is situated.
2. Capital represented by aircraft operated in international traffic by a designated airline and by movable property pertaining to the operation of such aircraft shall be taxable only in the territory of the Party in which the place of effective management of the airline is situated.
3. Where a special agreement for the avoidance of double taxation with respect to taxes on income and on capital exists between the Parties, the provisions of the latter shall prevail.

**[Paragraphs 1 through 3, option 2 of 2]**

1. Profits or income from the operation of aircraft in international traffic derived by an airline of one Party, including participation in inter-airline commercial agreements or joint business ventures, shall be exempt from any tax on profits or income imposed by the Government of the other Party.

*A provision on the taxation of income and capital in agreements is not widespread, in part because such matters may be the subject of a separate treaty on double taxation between the parties, one is presented above in light of the policy of ICAO (Doc 8632) that such an exemption be granted. Since the issue of taxation and taxation agreements between States would be an issue for financial authorities, a provision such as is presented here would require the involvement of those authorities in its formulation and negotiation.*

*In this alternative, paragraphs 1 and 2 address the taxation of income and capital respectively.*

*Paragraph 3 provides for a treaty between the Parties on double taxation to override the provisions of this agreement.*

*This alternative exempts airlines from certain taxes imposed by the Government of the other Party rather than specifying where airlines are taxable, i.e., in the territory of effective management of the airline, thereby clarifying the scope of tax exemptions.*

*Paragraph 1 specifically exempts profits and income from inter-airline commercial agreements.*

<b>Article 14 Taxation (cont'd)</b>	
<p>2. Capital and assets of an airline of one Party relating to the operation of aircraft in international traffic shall be exempt from all taxes on capital and assets imposed by the Government of the other Party.</p> <p style="text-align: center;"><b>[Paragraphs 1 through 3, option 2 of 2] (cont'd)</b></p> <p>3. Gains from the alienation of aircraft operated in international traffic and movable property pertaining to the operation of such aircraft which are received by an airline of one Party shall be exempt from any tax on gains imposed by the Government of the other Party.</p> <p>[4.* Each Party shall on a reciprocal basis grant relief from value added tax or similar indirect taxes on goods and services supplied to the airline designated by the other Party and used for the purposes of its operation of international air services. The tax relief may take the form of an exemption or a refund.]</p>	<p><i>The exemption is reciprocal though its coverage may vary as indicated by the bracketed text. For example, the Parties may also choose to include import restrictions, or airline supplies such as ticket stock, or computer equipment.</i></p>

<b>Article 15 Fair competition</b>	
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"><b>Traditional</b></div> <p>Each designated airline shall have a fair opportunity to operate the routes specified in the Agreement.</p>	<p><i>The traditional formulation is based on the phrase in the Convention (Article 44 ) f) which refers to every contracting State having, "a fair opportunity to operate international air services."</i></p>
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"><b>Transitional</b></div> <p>Each Party agrees:</p> <p>a) that each designated airline shall have a fair and equal opportunity to compete in providing the international air transportation governed by the agreement; and</p> <p>b) to take action to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of a designated airline of the other Party.</p>	<p><i>A limited transitional approach would be to apply the fair and equal opportunity to the routes specified in the annex to the agreement. However, a broader version is provided here, as well as paragraph b).</i></p>
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"><b>Full liberalization</b></div> <p>Each designated airline shall have a fair competitive environment under the competition laws of the Parties.</p>	<p><i>Under full liberalization, the Parties competition laws would be used to ensure a fair competitive environment for all designated airlines. A key element at this stage is an agreement or understanding among the Parties as to which Party's competition law will apply in addressing allegations of anti-competitive practices.</i></p>

<b>Article 16 Capacity</b>	
<div style="text-align: center; border: 1px solid black; padding: 5px; margin: 10px auto; width: 150px;"> <b>Traditional</b> </div> <p style="text-align: center;"><b>Predetermination</b></p> <ol style="list-style-type: none"> <li data-bbox="203 743 800 953">1. The total capacity to be provided on the agreed services by the designated airlines of the Parties shall be agreed between, or approved by, the aeronautical authorities of the Parties before the commencement of the operations, and thereafter according to anticipated traffic requirements.</li> <li data-bbox="203 995 800 1205">2. The agreed services to be operated by the designated airlines of the Parties shall have as their primary objective the provision at reasonable load factors of capacity adequate to meet the traffic requirements between the territories of the two Parties.</li> <li data-bbox="203 1247 800 1457">3. Each Party shall allow fair and equal opportunity for the designated airlines of both Parties to operate the agreed services between their respective territories so as to achieve equality and mutual benefit, in principle by equal sharing of the total capacity between the Parties.</li> <li data-bbox="203 1667 800 1797">4. Each Party and its designated airline(s) shall take into consideration the interests of the other Party and its designated airline(s) so as not to affect unduly the services which the latter provides.</li> </ol>	<p data-bbox="824 285 1421 600"><i>The model clauses for Predetermination, Bermuda I and Full liberalization methods of capacity determination were developed by ICAO in the early 1980s to encompass the principal regulatory approaches by States to the determination of the capacity offered by their designated airlines. Extensive guidance on the application and objectives of each of these methods is set out in Doc 9587.</i></p> <p data-bbox="824 743 1421 953"><i>Each designated airline may offer capacity based on predetermination where both Parties, or all designated airlines with government approval, agree jointly, in advance, on the total capacity to be offered on each route; increases require approval of both Parties.</i></p> <p data-bbox="824 995 1421 1633"><i>In terms of the number of bilateral agreements, the traditional and most widely used method of capacity regulation is predetermination. The requirement for mutual government and airline agreement ensures that a Party can require that the designated airlines of both Parties offer the same amount of capacity on all routes, and that both governments must agree on any change in the capacity offered. Some flexibility is provided by the practice of Parties individually approving “extra sections” (flights in addition to those regularly scheduled), for example, during holiday periods when demand increases sharply but temporarily. A more formal approach is for the Parties, after agreement has been reached on basic entitlements to capacity, to agree on temporary increases which would not, however, constitute a change in capacity entitlements.</i></p>

**Article 16**  
**Capacity (cont'd)**

5. If, on review, the Parties fail to agree on the capacity to be provided on the agreed services, the capacity that may be provided by the designated airlines of the Parties shall not exceed the total capacity (including seasonal variations) previously agreed to be provided.

**Transitional**

**Bermuda I**

[see alternatively, "Partial liberalization and predetermined increase" below]

1. The air transport facilities available to the travelling public should bear a close relationship to the requirements of the public for such transport.

2. The designated airline or airlines of each Party shall have a fair and equal opportunity to [compete] [operate] on any agreed route between the territories of the two Parties.

3. Each Party shall take into consideration the interests of the airlines of the other Party so as not to affect unduly their opportunity to offer the services covered by this Agreement.

4. Services provided by a designated airline under this Agreement shall retain as their primary objective the provision of capacity adequate to the traffic demands between the country of which such airline is a national and the country of ultimate destination of the traffic. The right to embark or disembark on such services international traffic destined for and coming from third countries at a point or points on the routes specified in this Agreement shall be exercised in accordance with the general principles of orderly development of international air transport to which both Parties subscribe and shall be subject to the general principle that capacity should be related to:

*Each designated airline may offer capacity based on Bermuda I where airlines determine capacity individually, based on qualitative criteria and subject to ex post facto review by the Parties.*

*In the Bermuda I type method of capacity regulation, the Parties adopt the capacity principles for airlines to follow, but then allow each airline the freedom to determine, in conformity with these principles, its own capacity based on airline analysis of market requirements. The capacity operated on the agreed routes is subject to ex post facto review by aeronautical authorities through their consultations. The Parties continued agreement on the principles on which capacity is to be determined as well as the effective functioning of the ex post facto review mechanism is critical to the successful functioning of this method.*

<p><b>Article 16</b> <b>Capacity (cont'd)</b></p>	
<p>a) the traffic requirements between the country of origin and the countries of ultimate destination of the traffic;</p> <p>b) the requirements of through airline operations; and</p> <p>c) the traffic requirements of the area through which the airline passes, after taking account of local and regional services.</p>	
<p><b>Transitional</b> <b>Bermuda I (cont'd)</b></p>	
<p>5. Consultations between the Parties shall be arranged whenever a Party requests that the capacity provided under the Agreement be reviewed to ensure the application of the principles in the Agreement governing the conduct of the services.</p>	
<p><b>Partial liberalization and predetermined increases</b></p> <p>[see alternatively, "Bermuda I" above]</p>	
	<p><i>Each designated airline may offer capacity based on partial liberalization and predetermined increases where Parties agree not to regulate capacity on certain services or routes and/or on one of several formulae for individual airlines to increase capacity on a regular basis. Additional flexibility for airlines to determine capacity falls into two general categories: 1) partial liberalization - allowing airlines to freely and individually determine their own capacity in certain markets or for certain services and 2) predetermined increases - agreement on formulae or schedules for future capacity increases.</i></p> <p><i>Examples of Partial liberalization include no capacity restrictions on: 1) all-cargo services; 2) non-scheduled passenger services to points not served by scheduled airlines; and 3) scheduled services to points not being served under existing agreements, including aircraft size limitation, but no limitation on the number of frequencies which could be operated.</i></p>

<p align="center"><b>Article 16</b> <b>Capacity (cont'd)</b></p>	
<div data-bbox="310 611 683 674" style="border: 1px solid black; padding: 5px; margin: 10px auto; width: fit-content;"> <p align="center"><b>Full liberalization</b></p> </div> <p align="center"><b>Free determination</b></p> <p>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> <p align="center"><b>Full liberalization</b> <b>Free determination (cont'd)</b></p> <p>2. Neither 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 the 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. Neither Party shall impose on the other 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><i>Examples of Predetermined increases include: 1) varying the percentages of capacity between the designated airlines on a route from 50-50 to 60-40; 2) agreed annual increases in the number of seats offered by individual airlines in city-pair markets; and 3) negotiated capacity increases over a multi-year period. Transitions are frequently negotiated as part of an "open skies" agreement.</i></p> <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).</i></p> <p><i>In the Free determination method typically found in "open skies" agreements and arrangements, the Parties agree to abrogate their direct bilateral 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>

<b>Article 16 Capacity (cont'd)</b>	
<p>4. Neither 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 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.</i></p>

<p align="center"><b>Article 17 Pricing (Tariffs)</b></p>	
<div data-bbox="321 825 670 890" style="border: 1px solid black; padding: 5px; margin: 10px auto; width: fit-content;"> <p align="center"><b>Traditional</b></p> </div> <p align="center"><b>Double approval</b></p> <p>1. The tariffs to be applied by the designated airline or airlines of a Party for services covered by this Agreement shall be established at reasonable levels, due regard being paid to all relevant factors, including interests of users, cost of operation, characteristics of service, reasonable profit, tariffs of other airlines and other commercial considerations in the market-place.</p>	<p><i>ICAO has developed extensive guidance on all aspects of international fares and rates. Additional detailed explanatory notes on the usage and application of these provisions can be found in Doc 9587. Hybrid approaches are possible with the traditional and transitional approaches, where for example one regulatory approach is chosen for normal tariffs and another for promotional. The provisions are therefore capable of being used in a flexible manner with appropriate elements being selected from each approach as required.</i></p> <p><i>The definition of a “tariff” or “pricing” is included in the article on definitions.</i></p> <p><i>The traditional double approval model remains the most common (in terms of the number of bilateral agreements) approach for establishing tariffs. A degree of liberalization can be provided under this approach if both Parties allow designated airlines wide latitude in the tariffs they are prepared to approve, or if they agree to approve certain tariffs, such as those meeting the criteria of a zone pricing regime.</i></p> <p><i>Parties may need to agree on which factors should be included or emphasized.</i></p>

<b>Article 17 Pricing (Tariffs) Cont'd</b>	
<b>[Paragraph 2, option 1 of 3]</b>	
<p>2. The tariffs shall, wherever possible, be agreed by the designated airlines concerned of both Parties, after discussion as required with their respective governments and, if applicable, consultation with other airlines. Such agreement shall, wherever possible, be reached by the use of the appropriate international tariff coordination mechanism. Failing any multilateral or bilateral agreement, each designated airline may develop tariffs individually.</p>	<p><i>The mechanism for developing tariffs includes two other options which would place progressively less emphasis on the need for multilateral or bilateral airline agreement. Airlines may participate, under the auspices of the International Air Transport Association (IATA), in tariff coordination for the purpose of interlining, subject to government approval and conditions.</i></p>
<b>Traditional/Double Approval (cont'd)</b>	
<b>[Paragraph 2, option 2 of 3]</b>	
<p>2. The tariffs may be agreed by the designated airlines concerned of both Parties, after consultation, if applicable, with other airlines. Such agreement may be reached by the use of the appropriate international tariff coordination mechanism. However, neither Party shall make participation in multilateral carrier tariff coordination a condition for approval of any tariff nor shall either Party prevent or require participation by the designated airline(s) of either Party in such multilateral tariff coordination. Each designated airline may at its option develop tariffs individually.</p>	
<b>[Paragraph 2, option 3 of 3]</b>	
<p>2. The tariffs shall, wherever possible, be established by the designated airlines individually. However, tariffs may be agreed by the designated airlines of the Parties if both Parties permit designated airlines to participate in the activities of the appropriate international tariff coordination mechanism(s). Any tariff agreement resulting from such activities shall be subject to the approval of each Party, and may be disapproved at any time whether or not previously approved.</p>	

**Article 17**  
**Pricing (Tariffs) Cont'd**

3. Each Party may require notification or filing of tariffs proposed by the designated airline(s) [of the other Party] [of both Parties] for carriage to or from its territory. Such notification or filing may be required not more than \_ days before the proposed date of introduction. In special cases, this period may be reduced.

4. The tariffs to be charged by the designated airlines of the Parties for carriage between their territories shall be subject to the approval of both Parties. [The tariffs to be charged by a designated airline of one Party for carriage between the territory of the other Party and that of a third State on services covered by this agreement shall be subject to the approval requirements of the other Party.]

**Traditional/Double Approval** (cont'd)

5. Approval of tariffs consequent upon the provisions of Paragraph 4 above may be given expressly by either Party to the airline(s) filing the tariffs. However, if a Party has not given in writing to the other Party [and [or] the airline(s) concerned] notice of disapproval of such tariffs of the airline(s) of the other Party within \_ days from the date of submission, the tariffs concerned shall be considered approved. In the event of the period of submission being reduced in accordance with Paragraph 3, the Parties may agree that the period within which any disapproval shall be given be reduced accordingly. No tariff shall come into force if either Party has given notice of disapproval [except as provided in Paragraph 6 below].

6. Each Party may request consultation regarding any tariff of an airline of either Party for services covered by this Agreement, including where the tariff concerned has been subject to a notice of disapproval. Such consultations shall be held not later than \_ days after receipt of the request. The Parties shall cooperate in securing information necessary for reasoned resolution of the issues. If the Parties reach agreement, each Party shall use its best efforts to put that agreement into effect. If no agreement is reached any decision to disapprove a tariff shall prevail.

*In recognition of the need to streamline filing procedures, the provision expresses the period for filing as a maximum period, with the number of days left blank (usually 30) and to be settled by the Parties according to the circumstances prevailing for the bilateral in question.*

*Unlike the filing requirements, which can be far reaching, the scope of approval falls primarily on tariffs for third and fourth freedom services which are completely within the regulatory ambit of the two Parties. It also incorporates an option to address tariffs for third party carriage.*

*With regard to the alternative procedures of express and tacit approval, the provision recognizes the need for streamlining the handling of tariff submissions and emphasizes the latter approach. As with the filing period, the period within which any disapproval must be notified has been left blank (usually 15 days for a 30 day filing/notification), to be settled by the Parties according to their particular bilateral circumstances.*

*This is a provision for a specific consultative process to be invoked under the bilateral regulation of tariffs, without limiting the circumstance under which it applies. In each case the time scale for holding such consultation is left blank to be settled by the Parties according to their particular circumstances.*

**Article 17**  
**Pricing (Tariffs) Cont'd**

7. [If the Parties cannot resolve an issue with respect to the tariffs mentioned in Paragraph 4, the dispute shall be settled in accordance with the provisions of Article \_ of this Agreement.]

8. A tariff established in accordance with the provisions of this clause shall remain in force, unless withdrawn by the airline(s) concerned or until a new tariff has been approved. [However a tariff shall not be prolonged for more than \_ months after the date on which it otherwise would have expired unless approved by the Parties. Where a tariff has been approved without an expiry date and where no new tariff has been filed and approved, that tariff shall remain in force until either of the Parties gives notice terminating its approval on its own initiative or at the request of the airline(s) concerned. Such termination shall not take place with less than \_ days notice.]

**Traditional/Double Approval (cont'd)**

9. [The Parties shall endeavour to ensure that active and effective machinery exists within their jurisdictions to investigate violations by any airline, passenger or freight agent, tour organizer, or freight forwarder, of tariffs established in accordance with this Article. They shall furthermore ensure that the violation of such tariffs is punishable by deterrent measures on a consistent and non-discriminatory basis.]

**Transitional**

**Country of origin**

*The optional text presents the traditional arbitration procedure for the settlement of disputes when the consultation process has failed to resolve an issue between the Parties.*

*The text on the duration of established tariffs covers such circumstances as a withdrawal of the tariffs by the airline(s) concerned, or a disapproval (of a previously approved tariff) by one or both of the Parties. Prolongation beyond the expiry date is subject to the applicable approval regime and may be limited to 12 months.*

*A provision on tariff enforcement is included on an optional basis.*

*The country of origin tariffs approach forms a middle ground between double approval, the most widely adopted method of regulating tariffs, and the dual disapproval, where the Parties concerned have no unilateral powers of intervention in tariffs.*

**Article 17**  
**Pricing (Tariffs) Cont'd**

[See alternatively "Dual disapproval" below]

1. The tariffs to be applied by the designated airline or airlines of a Party for services covered by this Agreement shall be established at reasonable levels, due regard being paid to all relevant factors, including interests of users, cost of operation, characteristics of service, reasonable profit, tariffs of other airlines, and other commercial considerations in the market-place.

2. The Parties agree to give particular attention to tariffs which may be objectionable because they appear unreasonably discriminatory, unduly high or restrictive because of the abuse of a dominant position, artificially low because of direct or indirect subsidy or support, or "predatory".

[Paragraph 3, option 1 of 3]

3. The tariffs shall, wherever possible, be agreed by the designated airlines concerned of both Parties, after discussion as required with their respective governments and, if applicable, consultation with other airlines. Such agreement shall, wherever possible, be reached by the use of the appropriate international tariff coordination mechanism. Failing any multilateral or bilateral agreement, each designated airline may develop tariffs individually.

**Transitional**  
**Country of origin (cont'd)**

[Paragraph 3, option 2 of 3]

3. The tariffs may be agreed by the designated airlines concerned of both Parties, after consultation, if applicable, with other airlines. Such agreement may be reached by the use of the appropriate international tariff coordination mechanism. However, neither Party shall make participation in multilateral carrier tariff coordination a condition for approval of any tariff nor shall either Party prevent or require participation by the designated airline(s) of either Party in such multilateral tariff coordination. Each designated airline may at its option develop tariffs individually.

*Parties may need to agree on which factors should be included or emphasised.*

*The mechanism for developing tariffs includes two other options which would place progressively less emphasis on the need for multilateral or bilateral airline agreement. Airlines may participate, under the auspices of IATA, in tariff coordination for the purpose of interlining, subject to government approval and conditions.*

**Article 17**  
**Pricing (Tariffs) Cont'd**

**[Paragraph 3, option 3 of 3]**

3. The tariffs shall, wherever possible, be established by the designated airlines individually. However, tariffs may be agreed by the designated airlines of the Parties if both Parties permit designated airlines to participate in the activities of the appropriate international tariff coordination mechanism(s). Any tariff agreement resulting from such activities shall be subject to the approval of each Party, and may be disapproved at any time whether or not previously approved.

4. Each Party may require notification or filing of tariffs proposed by the designated airline(s) [of the other Party] [of both Parties] for carriage to or from its territory. Such notification or filing may be required not more than \_ days before the proposed date of introduction. In special cases, this period may be reduced.

5. Each Party shall have the right to approve or disapprove tariffs for one-way or round-trip carriage between the territories of the two Parties which commences in its own territory. [The tariffs to be charged by a designated airline of one Party for carriage between the territory of the other Party and that of a third State on services covered by this agreement shall be subject to the approval requirements of the other Party.] Neither 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 two Parties commencing in the territory of the other Party.

*In recognition of the need to streamline filing procedures, the provision expresses the period for filing as a maximum period, with the number of days left blank (usually 30) and to be settled by the Parties according to the circumstances prevailing for the bilateral in question.*

*Unlike the filing requirements, which can be far reaching, the scope of approval falls primarily on tariffs for third and fourth freedom services which are completely within the regulatory ambit of the two Parties. The country of origin approach forms a middle ground between double approval, the most widely adopted method of regulating tariffs, and the dual disapproval, where the Parties concerned have no unilateral powers of intervention in tariffs. The approval paragraph also incorporates an option to address tariffs for third party carriage.*

**Article 17**  
**Pricing (Tariffs) Cont'd**

**Transitional**  
**Country of origin (cont'd)**

6. Approval of tariffs consequent upon the provisions of Paragraph 5 above may be given expressly by either Party to the airline(s) filing the tariffs. However, if the Party concerned has not given in writing to the other Party [and [or] the airline(s) concerned] notice of disapproval of such tariffs of the airline(s) of the other Party within \_ days from the date of submission, the tariffs concerned shall be considered approved. In the event of the period of submission being reduced in accordance with Paragraph 4, the Parties may agree that the period within which any disapproval shall be given be reduced accordingly.

7. Where either Party believes that a tariff for carriage to its territory falls within the categories described in Paragraph 2 above, such Party shall give notice of dissatisfaction to the other Party [as soon as possible and at least] within \_ days of the date of notification or filing of the tariff, and may avail itself of the consultation procedures set out in Paragraph 8 below.

8. Each Party may request consultation regarding any tariff of an airline of either Party for services covered by this Agreement, including where the tariff concerned has been subject to a notice of disapproval or dissatisfaction. Such consultations shall be held not later than \_ days after receipt of the request. The Parties shall cooperate in securing information necessary for reasoned resolution of the issues. If the Parties reach agreement, each Party shall use its best efforts to put that agreement into effect. If no agreement is reached, the decision of the Party in whose territory the carriage originates shall prevail.

*The filing period, the period within which any disapproval must be notified has been left blank (usually 15 days for a 30 day filing/notification), to be settled by the Parties according to their particular bilateral circumstances.*

*A traditional settlement of dispute provision involving arbitration is not applicable in the case of country of origin or dual disapproval, where only a consultation provision would apply. However, disputes that arise over such anti-competitive practices as predatory pricing may well arise in the case of the country of origin and dual disapproval approaches. Because of the time sensitive nature of tariffs in these kinds of disputes under these more liberal regimes, the Parties may wish to utilise the more accelerated dispute resolution procedure specifically developed for tariffs and capacity as set out in the article on dispute settlement.*

<p style="text-align: center;"><b>Article 17</b> <b>Pricing (Tariffs) Cont'd</b></p>	
<p style="text-align: center;"><b>Transitional</b> <b>Country of origin (cont'd)</b></p> <p>9. A tariff established in accordance with the provisions of this clause shall remain in force, unless withdrawn by the airline(s) concerned or until a new tariff has been approved. [However a tariff shall not be prolonged for more than _ months after the date on which it otherwise would have expired unless approved by the Parties. Where a tariff has been approved without an expiry date and where no new tariff has been filed and approved, that tariff shall remain in force until either of the Parties gives notice terminating its approval on its own initiative or at the request of the airline(s) concerned. Such termination shall not take place with less than _ days notice.]</p> <p>10. [The Parties shall endeavour to ensure that active and effective machinery exists within their jurisdictions to investigate violations by any airline, passenger or freight agent, tour organizer, or freight forwarder, of tariffs established in accordance with this Article. They shall furthermore ensure that the violation of such tariffs is punishable by deterrent measures on a consistent and non-discriminatory basis.]</p>	<p><i>The text on the duration of established tariffs covers such circumstances as a withdrawal of the tariffs by the airline(s) concerned, or a disapproval (of a previously approved tariff) by the Party in whose territory the carriage originates.</i></p> <p><i>Prolongation beyond the expiry date is subject to the applicable approval regime and may be limited to 12 months.</i></p> <p><i>A provision on tariff enforcement is included on an optional basis.</i></p>



**Article 17**  
**Pricing (Tariffs) Cont'd**

[Paragraph 2, option 2 of 2]

2. Prices for international air transportation between the territories of the Parties shall not be required to be filed, unless such filing shall be required for the purpose of implementing a mutual agreement reached under paragraph 3 of this Article. Neither Party shall require notification or filing by airlines of the other Party of prices charged by charterers to the public, except as may be required on a non-discriminatory basis for information purposes. Notwithstanding the foregoing, the designated airlines of the Parties shall continue to provide immediate access, on request, to information on historical, existing and proposed prices to the aeronautical authorities of the Parties in a manner and format acceptable to those aeronautical authorities.

**Dual disapproval (cont'd)**

3. Neither Party shall take unilateral action to prevent the inauguration of a proposed tariff or the continuation of an effective tariff of a designated airline of either Party [or on the basis of reciprocity of the airline(s) of a third State] for carriage between the territories of the Parties [or between the territory of the other Party and that of a third State.]

4. [Approval of tariffs consequent upon the provisions of Paragraph 3 above may be given expressly by either Party to the airline(s) filing the tariffs. Where either Party believes that a tariff falls within the categories described in Paragraph 1 above, such Party shall give notice of dissatisfaction to the other Party [as soon as possible and at least] within \_ days of the date of notification or filing of the tariff, and may avail itself of the consultation procedures set out in Paragraph 5 below. However, unless both Parties have agreed in writing to disapprove the tariffs concerned under those procedures, the tariffs shall be considered approved.]

*The possibility of unilateral action to intervene is further circumscribed in this provision by paragraph 3 which prohibits unilateral action to prevent the inauguration or continuation of a price proposed to be charged. The only recourse, if one Party is dissatisfied or believes that a price is inconsistent with the considerations on unfair competitive practices set out in paragraph 1, is to the consultation mechanism. The prices would go into effect or continue in effect if no agreement comes out of the consultation process.*

*As with the country of origin approach, the Parties may wish to modify this provision to address a dispute through the article on dispute settlement when the consultation process fails to achieve agreement. In such a case the final sentence of paragraph 3, on the price going into effect if there is no agreement, would be affected. The filing period, the period within which any disapproval must be notified has been left blank (usually 15 days for a 30 day filing/notification), to be settled by the Parties according to their particular bilateral circumstances.*

**Article 17**  
**Pricing (Tariffs) Cont'd**

5. Each Party may request consultation regarding any tariff of an airline of either Party for services covered by this Agreement, including where the tariff concerned has been subject to a notice of dissatisfaction. Such consultations shall be held not later than \_ days after receipt of the request. The Parties shall cooperate in securing information necessary for reasoned resolution of the issues. If the Parties reach agreement with respect to a tariff for which notice of dissatisfaction has been given, each Party shall use its best efforts to put that agreement into effect but if no agreement is reached the tariff in question shall go into or continue in effect.

**Full liberalization**

Prices [Tariffs] charged by airlines shall not be required to be filed with, or approved, by either Party.

*A text, similar to the country of origin, on the duration of established tariffs similar may be included to cover such circumstances as a withdrawal of the tariffs by the airline(s) concerned, or a disapproval by both Parties.*

*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.*

<b>Article 18 Safeguards</b>	
<p>1. The Parties agree that the following airline practices may be regarded as possible unfair competitive practices which may merit closer examination:</p> <ul style="list-style-type: none"> <li>a) charging fares and rates on routes at levels which are, in the aggregate, insufficient to cover the costs of providing the services to which they relate;</li> <li>b) the addition of excessive capacity or frequency of service;</li> <li>c) the practices in question are sustained rather than temporary;</li> <li>d) the practices in question have a serious economic effect on, or cause significant damage to, another airline;</li> <li>e) the practices in question reflect an apparent intent or have the probable effect, of crippling, excluding or driving another airline from the market; and</li> <li>f) behaviour indicating an abuse of dominant position on the route.</li> </ul> <p>2. If the aeronautical authorities of one Party consider that an operation or operations intended or conducted by the designated airline of the other Party may constitute unfair competitive behaviour in accordance with the indicators listed in paragraph 1, they may request consultation in accordance with Article [ _ on Consultation] with a view to resolving the problem. Any such request shall be accompanied by notice of the reasons for the request, and the consultation shall begin within 15 days of the request.</p> <p>3. If the Parties fail to reach a resolution of the problem through consultations, either Party may invoke the dispute resolution mechanism under Article [ _ ] to resolve the dispute.</p>	<p><i>The provision on Safeguards will only be relevant and applicable if the Parties have agreed to move to a liberalized, even if not a fully "open skies" environment for their designated carriers. The list of airline commercial practices that may be signals of possible unfair competitive practices are indicative only and were developed by ICAO and distributed to Contracting States as a Recommendation. This provision could be used where two States have agreed to move toward a less controlled regime but either one or both parties do not have competition laws, they may need to have a mutually-agreed set of descriptions of what would constitute unfair and/or fair competitive practices as a safeguard measure. Given the particular competitive environment in which the airlines will operate and the competition law regimes applicable to their respective territories, the Parties may decide on other indicators of unfair competitive behaviour which could be included in this provision.</i></p> <p><i>The "safeguard mechanism" consists of the safeguards provision together with the fourth alternative on dispute settlement, a mediation process based on an ICAO Recommendation which is contained in the Dispute Settlement Article.</i></p>

**Article 19**  
**Competition laws**

1. The Parties shall inform each other about their competition laws, policies and practices or changes thereto, and any particular objectives thereof, which could affect the operation of air transport services under this agreement and shall identify the authorities responsible for their implementation.
2. The Parties shall, to the extent permitted under their own laws and regulations, assist each other's airlines by providing guidance as to the compatibility of any proposed airline practice with their competition laws, policies and practices.
3. The Parties shall notify each other whenever they consider that there may be incompatibility between the application of their competition laws, policies and practices and the matters related to the operation of this Agreement; the consultation process contained in this Agreement shall, if so requested by either Party, be used to determine whether such a conflict exists and to seek ways of resolving or minimizing it.
4. The Parties shall notify one another of their intention to begin proceedings against each other's airline(s) or of the institution of any relevant private legal actions under their competition laws which may come to their attention.
5. Without prejudice to the right of action of either Party the consultation process contained in this agreement shall be used whenever either Party so requests and should aim to identify the respective interests of the Parties and the likely implications arising from the particular competition law action.
6. The Parties shall endeavour to reach agreement during such consultations, having due regard to the relevant interests of each Party and to alternative means which might also achieve the objectives of that competition law action.
7. In the event agreement is not reached, each Party shall, in implementing its competition laws, policies and practices, give full and sympathetic consideration to the views expressed by the other Party and shall have regard to international comity, moderation and restraint.

*The foregoing model clause developed by ICAO is intended to be a comprehensive but adaptable set of procedures wherever two Parties have experienced or may experience difficulties in their air transport relations from the application of national competition laws. The provisions place emphasis on notification, cooperation, restraint and the consultation process to avoid and resolve conflicts or potential conflicts. Its use by the Parties would not be relevant, for example, where both Parties endorse cooperative airline practices, such as tariff coordination, and neither Party has a competition law. Nor is it intended to supplement any existing procedures. In general it seeks to strengthen the bilateral machinery for conflict avoidance and resolution and to bring issues in the application of competition law standards to air transport into the bilateral framework. The clause draws mainly on the concepts and principles set out in detailed Guidelines on this topic that were developed by ICAO concurrently with this model clause (see Doc 9587).*

**Article 19**  
**Competition laws (cont'd)**

8. The Party under whose competition laws a private legal action has been instituted shall facilitate access by the other Party to the relevant judicial body and/or, as appropriate, provide information to that body. Such information could include its own foreign relations interests, the interests of the other Party as notified by that Party and, if possible, the results of any consultation with that other Party concerning the action.

9. The Parties shall cooperate, to the extent not precluded by their national laws or policies and in accordance with any applicable international obligations, in allowing the disclosure by their airlines or other nationals of information pertinent to a competition law action to the competent authorities of each other, provided that such cooperation or disclosure would not be contrary to their significant national interests.

10. While an action taken by the competition law authorities of one Party is the subject of consultations with the other Party, the Party in whose territory the action is being taken shall, pending the outcome of these consultations, refrain from requiring the disclosure of information situated in the territory of the other Party and that other Party shall refrain from applying any blocking legislation.

<p style="text-align: center;"><b>Article 20</b> <b>Currency conversion and remittance of earnings</b></p>	
<p>Each Party shall permit airline(s) of the other Party to convert and transmit abroad to the airline(s) choice of State, on demand, all local revenues from the sale of air transport services and associated activities directly linked to air transport in excess of sums locally disbursed, with conversion and remittance permitted promptly without restrictions, discrimination or taxation in respect thereof at the rate of exchange applicable as of the date of the request for conversion and remittance.</p>	<p><i>In some agreements, this provision could be a separate article or could also be part of a “Commercial opportunities” Article.</i></p> <p><i>This ICAO-developed provision to facilitate currency conversion and remittance is a more comprehensive version of a provision found in almost all bilateral air service agreements.</i></p> <p><i>The term "associated activities directly linked to air transport" would normally include activities closely related to the provision of air services, such as a bus service between the airport and hotels, and where permitted, the provision of ground handling services to other airlines. The term would not include activities such as revenue from hotels, car rentals, investments in local real estate or stocks and bonds, which will presumably be subject to a different conversion and remittance regime. The term "without taxation" refers to taxation on the conversion and remittance, not to national income tax, which is dealt with in the Article on “Taxation”.</i></p>

<b>Article 21</b> <b>Sale and marketing of air service products</b>	
<p>1. Each Party shall accord airlines of the other Party the right to sell and market international air services and related products in its territory (directly or through agents or other intermediaries of the airline's choice), including the right to establish offices, both on-line and off-line.</p> <p>2. [Each airline shall have the right to sell transportation in the currency of that territory or, at its discretion, in freely convertible currencies of other countries, and any person shall be free to purchase such transportation in currencies accepted by that airline.]</p>	<p><i>In some agreements, this provision could be a separate article or could also be part of a "Commercial opportunities" Article.</i></p> <p><i>Some provisions in this Article refer to "designated airlines". Parties would need to consider whether the provisions on the activities contained in this Article should also be extended to all airlines of a Party rather than only designated ones.</i></p> <p><i>This ICAO-developed provision provides a simple but fair standard for authorizing airlines to sell and market their services. This clause does not apply to the sale and marketing of air service products through computer reservation systems (CRSs) which is dealt with by a separate provision. The term "on-line office" describes a situation where an office is located in a city or country served by the airline directly; an "off-line office" is located in a city/country not directly served by the airline. Some recent bilateral agreements add the alternative provision in brackets.</i></p> <p><i>The optional text provides assurance to airlines that they can freely sell in convertible currencies accepted for sale by that airline, while not requiring airlines to accept currencies in which the airlines do not deal.</i></p>

<p style="text-align: center;"><b>Article 22</b> <b>Non-national personnel and access to local services</b></p>	
<p style="text-align: center;"><b>Traditional and Transitional</b></p> <ol style="list-style-type: none"><li>1. The designated airline or airlines of one Party shall be allowed, on the basis of reciprocity, to bring into and to maintain in the territory of the other Party their representatives and commercial, operational and technical staff as required in connection with the operation of the agreed services.</li><li>2. These staff requirements may, at the option of the designated airline or airlines of one Party, be satisfied by its own personnel or by using the services of any other organization, company or airline operating in the territory of the other Party and authorized to perform such services for other airlines.</li><li>3. The representatives and staff shall be subject to the laws and regulations in force of the other Party, and consistent with such laws and regulations:<ol style="list-style-type: none"><li>a) each Party shall, on the basis of reciprocity and with the minimum of delay, grant the necessary employment authorizations, visitor visas or other similar documents to the representatives and staff referred to in paragraph 1 of this Article; and</li></ol></li></ol>	<p><i>In some agreements, this provision could be a separate article or could also be part of a “Commercial opportunities” Article.</i></p> <p><i>Some provisions in this Article refer to “designated airlines”. Parties would need to consider whether the provisions on the activities contained in this Article should also be extended to all airlines of a Party rather than only designated ones.</i></p> <p><i>The traditional and transitional approaches rely on reciprocity which, if interpreted in a quantitative manner, would result in a numerical limitation on the number of airline employees which could be stationed in the other Party's territory.</i></p>

<p style="text-align: center;"><b>Article 22</b> <b>Non-national personnel and access to local services (cont'd)</b></p>	
<p>b) both Parties shall facilitate and expedite the requirement of employment authorizations for personnel performing certain temporary duties not exceeding ninety (90) days.</p>	<p><i>Paragraph 3b) provides for temporary employees for whom the employment and residence requirements could be less extensive than for long-term employees.</i></p>
<p style="text-align: center;"><b>Full liberalization</b></p>	
<p>Each Party shall permit designated airlines of the other Party to:</p>	<p><i>Paragraph a) of this ICAO provision on non-national personnel, is intended to facilitate the stationing abroad of certain airline personnel – those who perform managerial, commercial, technical and operational duties. The provision is subject to international obligations as well as national laws of the receiving Party concerning entry, residence and employment, which in most cases should be flexible enough to accommodate the obligations of a Party under this provision.</i></p>
<p>a) bring in to its territory and maintain non-national employees who perform managerial, commercial, technical, operational and other specialist duties which are required for the provision of air transport services, consistent with the laws and regulations of the receiving State concerning entry, residence and employment; and</p>	<p><i>Paragraph b) is intended to respond to the need to accommodate the more frequent use of personnel from third countries by air carriers as a result of the increasing number of alliances and the globalization of airline commercial activities. Consequently, it would include the ability to use personnel and services of an airline partner in an alliance or codeshare arrangement, as well as any local company or organization authorized to provide a service.</i></p>
<p>b) use the services and personnel of any other organization, company or airline operating in its territory and authorized to provide such services.</p>	

**Article 23**  
**Change of gauge**

**Traditional**

1. In operating any agreed service on any specified route a designated airline of one Party may substitute one aircraft for another at a point in the territory of the other Party on the following conditions only:

- a) that it is justified by reason of economy of operation;
- b) that the aircraft used on the section of the route more distant from the terminal in the territory of the first Party is not larger in capacity than that used on the nearer section;
- c) that the aircraft used on the more distant section shall operate only in connection with and as an extension of the service provided by the aircraft used on the nearer section and shall be scheduled so to do; the former shall arrive at the point of change for the purpose of carrying traffic transferred from or to be transferred into, the aircraft used on the nearer section; and its capacity shall be determined with primary reference to this purpose;
- d) that there is an adequate volume of through traffic;
- e) that the airline [shall not hold itself out to the public by advertisement or otherwise] [shall not hold itself out directly or indirectly and whether in timetables, computer reservation systems, fare quote systems or advertisements, or by other means], [as providing a service which originates at a point where the change of aircraft is made][as providing any service other than the agreed service on the relevant specified routes;
- f) that where an agreed service includes a change of aircraft this fact is shown in all timetables, computer reservation systems, fare quote systems, advertisements and other like means;
- g) that the provisions of Article \_ of this Agreement shall govern all arrangements made with regard to change of aircraft; and

*In some agreements, this provision could be a separate article, could also be part of a "Commercial opportunities" Article, or could be covered in the Route schedule.*

*A provision on change of gauge may be a stand alone article or be dealt with in the route schedule. Generally, a change of gauge enables an airline to operate more economically over international route sectors distant from its own territory by more closely matching the capacity of its flights on such sectors to the lower volumes of traffic to and from its home territory normally expected in the case of the more remote sectors of a long-haul route.*

*In the traditional type of change of gauge formula a change of aircraft is permitted, but subject to a number of conditions including scheduling coordination, size of aircraft, volume of traffic and capacity limitations in the case of a capacity controlled regime. The conditions are aimed at permitting, but nevertheless circumscribing the use of change of gauge. In sub-paragraph e), optional text is given to encompass other modern marketing and selling means than advertising when holding out a change of gauge service. In sub-paragraph h), the optional text provides greater flexibility for the operating carrier by enabling, subject to authorization, more than one flight from the change point. However the other conditions on change of gauge would continue to apply.*

**Article 23**  
**Change of gauge (cont'd)**

**Traditional**(cont'd)

h) that in connection with any one aircraft flight into the territory in which the change of aircraft is made, only one flight may be made out of that territory [unless the airline is authorized by the aeronautical authorities of the other Party to operate more than one flight].

2. The provisions of paragraph 1 of this Article shall:

- a) not restrict the right of a designated airline to change aircraft in the territory of the Party designating that airline; and
- b) not allow a designated airline of one Party to station its own aircraft in the territory of the other Party for the purpose of change of aircraft.

3. The provisions of this Article shall not limit the ability of an airline to provide services through codesharing and/or blocked space arrangements as provided for in this Agreement [the Route Schedules of this Agreement.]

**Transitional**

1. Each designated airline may on any or all flights on the agreed services and at its option, change aircraft in the territory of the other Party or at any point along the specified routes, provided that:

- a) aircraft used beyond the point of change of aircraft shall be scheduled in coincidence with the inbound or outbound aircraft, as the case may be; and
- b) in the case of a change of aircraft in the territory of the other Party and where more than one aircraft is operated beyond the point of change, not more than one such aircraft may be of equal size and none may be larger than the aircraft used on the third and fourth freedom sector.

*Paragraph 2 allows unrestricted change of gauge in an airlines own country but prohibits stationing aircraft in the other Party's territory.*

*The provisions of traditional change of gauge articles often cannot be practically applied to codeshare and/or blocked space situations and if these activities are to be permitted an exception to the change of gauge provisions is needed. The bracketed language will be used when the Route schedules are contained in an Annex to the Agreement. In such cases, States may wish to include change of gauge provisions in that Annex.*

*The transitional approach is a more modern and flexible change of gauge formula, one which is constrained only by conditions regarding scheduling coordination, and size of aircraft when there is more than one aircraft operating beyond the point of change. The references in paragraph 2 to the use of leased equipment and commercial arrangements presupposes that the Parties have also agreed on these matters.*

<b>Article 23</b> <b>Change of gauge (cont'd)</b>	
<b>Transitional (cont'd)</b>	
<p>2. For the purpose of change of gauge operations, a designated airline may use its own equipment and, subject to national regulations, leased equipment, and may operate under commercial arrangements with another airline.</p> <p>3. A designated airline may use different or identical flight numbers for the sectors of its change of aircraft operations.</p>	
<b>Full liberalization</b>	
<p>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>The full liberalization approach is found in many "open skies" agreements and it 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 bilateral 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>

<b>Article 24 Ground handling</b>	
<div style="text-align: center; border: 1px solid black; padding: 5px; margin: 10px auto; width: 200px;"><b>Traditional</b></div> <p>Subject to applicable safety provisions, including ICAO Standards and Recommended Practices (SARPs) contained in Annex 6, the designated airline may on the basis of reciprocity, use the services of a designated airline of the other Party for ground handling services in that Party's territory.</p> <div style="text-align: center; border: 1px solid black; padding: 5px; margin: 10px auto; width: 200px;"><b>Transitional</b></div> <p style="text-align: center;"><b>[Option 1 of 2]</b></p> <p>Subject to applicable safety provisions, including ICAO Standards and Recommended Practices (SARPs) contained in Annex 6, the designated airline may choose from among competing providers of ground handling services.</p>	<p><i>In some agreements, this provision could be a separate article or could also be part of a "Commercial opportunities" Article.</i></p> <p><i>All provisions should contain a cross reference to safety provisions. Sentence which indicates ground handling will be covered by Annex 6.</i></p> <p><i>Some provisions in this Article refer to "designated airlines". Parties would need to consider whether the provisions on the activities contained in this Article should also be extended to all airlines of a Party rather than only designated ones.</i></p> <p><i>The reciprocal nature of the traditional approach generally results in satisfactory ground handling services being provided where designated airlines of both Parties serve the same airports in both Parties. However, where there is no reciprocity (for example, if no designated airline of the other Party serves an airport where the designated airlines of the first Party have ground handling services) airlines sometimes find the services unsatisfactory and prices non-competitive.</i></p> <p><i>This approach allows a designated airline to choose from among competing providers of ground handling services. This can provide some improvement in services and cost depending on the degree of competition among the providers. This approach is commonly found at airports with a large number of airlines and physical limitations on the number of ground handlers that can be accommodated.</i></p>

**Article 24**  
**Ground handling (cont'd)**

**[Option 2 of 2]**

1. Subject to applicable safety provisions, including ICAO Standards and Recommended Practices (SARPs) contained in Annex 6, the designated airline or airlines of one Party shall be permitted, on the basis of reciprocity, to perform its own ground handling in the territory of the other Party and, at its option, to have ground handling services provided in whole or in part by any agent authorized by the competent authorities of the other Party to provide such services.

**Transitional**  
**[Option 2 of 2] (cont'd)**

2. The designated airline or airlines of one Party shall also have the right to provide ground handling services for other airlines operating at the same airport in the territory of the other Party.

3. The exercise of the rights set forth in paragraphs 1 and 2 of this Article shall be subject only to physical or operational constraints resulting from considerations of airport safety or security. Any constraints shall be applied uniformly and on terms no less favourable than the most favourable terms available to any airline engaged in similar international air services at the time the constraints are imposed.

**Full liberalization**

1. Subject to applicable safety provisions, including ICAO Standards and Recommended Practices (SARPs) contained in Annex 6, each Party shall authorize airline(s) of the other Party, at each airline's choice, to:

- a) perform its own ground handling services;
- b) handle another or other air carrier(s);
- c) join with others in forming a service-providing entity; and/or
- d) select among competing service providers.

*This transition permits an airline on the basis of reciprocity to perform its own ground handling, or choose to have those services provided by any agent authorized by the competent authority of the other Party, to provide ground handling services to other airlines operating at the same airport in the territory of the other Party.*

*Paragraph 3 recognizes that ground handling rights may have to be constrained but only due to airport safety or security considerations. It also accords most favoured nation and national treatment to the application of any such constraints.*

*In the full liberalization approach, developed by ICAO, the designated airline has a wider choice with respect to ground handling: it can perform its own, or use those of another airline, provide the services to other airlines, or join with other airlines in providing the services collectively, or choose from among competing providers (see Doc 9587).*

*Depending on their particular circumstances, States should consider the gradual, phased introduction of self-handling and multiple suppliers based, where appropriate, on the size of the airport.*

<b>Article 24 Ground handling (cont'd)</b>	
<p>2. An air carrier is permitted to choose freely from among the alternatives available and to combine or change its option, except where this is demonstrably impractical and also where constrained by relevant safety and security considerations, and (with the exception of self-handling in a) above) by the scale of airport operations being too small to sustain competitive providers.</p> <p>3. Parties would always be required to take the necessary measures to ensure reasonable cost-based pricing and fair and equal treatment for air carrier(s) of the other Party/Parties.</p>	<p><i>At certain airports the number of air carriers and limited physical facilities may not permit all air carriers to perform their own airside ground handling; in such cases, carriers allowed to do so should be selected by objective, transparent and non-discriminatory procedures and competitive, alternative suppliers should be available.</i></p>



<b>Article 25</b>	
<b>Codesharing/Cooperative arrangements</b>	
<b>(cont'd)</b>	
<b>Full liberalization</b>	
<p>1. In operating or holding out the authorized services on the agreed routes, any designated airline of one Party may enter into cooperative marketing arrangements such as joint venture, blocked space or codesharing arrangements, with:</p> <ol style="list-style-type: none"> <li>a) an airline or airlines of either Party;</li> <li>b) an airline or airlines of a third country; and</li> <li>c) a surface transportation provider of any country,</li> </ol> <p>provided that all airlines in such arrangements 1) hold the appropriate authority and 2) meet the requirements normally applied to such arrangements.</p> <p style="text-align: center;"><b>Full liberalization (cont'd)</b></p> <p>2. The Parties agree to take the necessary action to ensure that consumers are fully informed and protected with respect to codeshared flights operating to or from their territory and that, as a minimum, passengers be provided with the necessary information in the following ways:</p> <ol style="list-style-type: none"> <li>a) orally and, if possible, in writing at the time of booking;</li> <li>b) in written form, on the ticket itself and/or (if not possible), on the itinerary document accompanying the ticket or on any other document replacing the ticket, such as a written confirmation, including information on whom to contact in case of a problem and a clear indication of which airline is responsible in case of damage or accident; and</li> <li>c) orally again, by the airline's ground staff at all stages of the journey.</li> </ol> <p>[3. The airlines are required to file for approval any proposed cooperative arrangement with the aeronautical authorities of both Parties at least _____ days before its proposed introduction].</p>	<p><i>The full liberalization stage includes cooperative arrangements with third-country airlines and surface providers. In most "open skies" agreements it also includes wet leasing between airlines of the Parties but for the purposes of this Template Agreement separate provisions on leasing have been included.</i></p> <p><i>The phrase, "the requirements normally applied" to the cooperative arrangements would include, in the case of codesharing for example, requirements for consumer notification and protection. This could take the form of an additional article drawn from Doc 9587.</i></p> <p><i>The term in b) "any other document replacing the ticket, such as written confirmation" includes electronic ticketing.</i></p> <p><i>The optional filing requirement could serve as a means for the aeronautical authorities to verify that all airlines have the appropriate authority and meet requirements applied to such arrangements, Alternatively, national law and regulations may be used for this purpose.</i></p>

<p style="text-align: center;"><b>Article 25</b> <b>Codesharing/Cooperative arrangements</b> <b>(cont'd)</b></p>	
<p style="text-align: center;">[Option 2 of 2]</p> <p style="text-align: center;"><b>Transitional and Full liberalization</b></p> <p>1. Subject to the regulatory requirements normally applied to such operations by the aeronautical authorities of each Party, each designated airline of the other Party may enter into cooperative arrangements for the purpose of:</p> <p>a) holding out the agreed services on the specified routes by codesharing (i.e. selling transportation under its own code) on flights operated by an airlines(s) of either Party [and/or of any third country]; and/or</p>	<p><i>Sub-paragraph a) allows air carriers to hold out their services by selling transportation under their own codes (marketing carriers) on flights operated by airlines of either Party and/or third country carriers (operating carriers), where the bracketed language is included. (To limit codesharing to designated airlines of the Parties, the bracketed language should be omitted.).</i></p>
<p style="text-align: center;">[Option 2 of 2]</p> <p style="text-align: center;"><b>Transitional and Full liberalization (cont'd)</b></p> <p>b) carrying traffic under the code of any other airline(s) where such other airline(s) has been authorized by the aeronautical authorities of one Party to sell transportation under its own code on flights operated by that designated airline of the other Party.</p>	<p><i>Sub-paragraph b) allows designated airlines to carry the codes of other airlines.</i></p>

<b>Article 25</b> <b>Codesharing/Cooperative arrangements</b> <b>(cont'd)</b>	
<p>2. Codesharing services involving transportation between points in one Party shall be restricted to flights operated by (an) airline(s) authorized by the aeronautical authorities of that Party to provide service between points in that Party's territory and all transportation between points in such territory under the code of the designated airline(s) of the other Party shall only be available as part of an international journey. All airlines involved in codesharing arrangements shall hold the appropriate underlying route authority. Airlines shall be permitted to transfer traffic between aircraft involved in codeshare services without limitation. The aeronautical authorities of one Party shall not withhold permission for codesharing services identified in a) above by the designated airline(s) of the other Party on the basis that the airline(s) operating the aircraft does not have the right from such aeronautical authorities to carry traffic under the code of the designated airline(s) of the other Party.</p> <p>3. For the purposes of Article _ (Capacity) of the Agreement, there shall be no limit imposed by the aeronautical authorities of one Party on the capacity to be offered by the airline or airlines designated by the other Party on codesharing services.</p>	<p><i>The first sentence of paragraph 2 allows codesharing on domestic segments in a Party's territory, but only as part of an international journey. The last sentence of paragraph 2 prohibits aeronautical authorities of a Party from withholding codeshare approval on the basis that the operating airline does not have the rights from that Party to carry traffic under the code of the designated airline of the other Party. If such withholding were allowed many potential code share opportunities that the provisions are intended to permit could be prevented by the other Party.</i></p> <p><i>Paragraph 3 recognizes the importance of clarity with respect to the capacity entitlements permitted for codeshare operations. Often there are no limitations on the capacity that may be offered by marketing air carriers on codeshare services; however, flights operated with own equipment by carriers that are designated under the agreement are frequently subject to capacity restrictions whether or not another air carrier's code is also used on the flights. The capacity of third country operating air carriers is normally only subject to the provisions of an air agreement between the State of the operating air carrier and the other Party.</i></p>

<p style="text-align: center;"><b>Article 26</b> <b>Leasing</b></p>	
<p>1. Either Party may prevent the use of leased aircraft for services under this agreement which does not comply with Articles _____ [(Safety)] and _____ (Security).</p>	<p><i>To meet safety concerns with the use of leased aircraft in certain situations, States in all three stages can use agreements under Article 83 bis to transfer certain responsibilities of the State of Registry under the Convention to the State of the Aircraft Operator in accordance with relevant ICAO guidance. A Party which has not ratified Article 83 bis (and is therefore not bound to recognize an agreement concluded under that amendment) could agree to recognize a transfer of responsibilities pursuant to an agreement under Article 83 bis concluded by the other (another) Party to the air service agreement. This recognition would, of course, only extend to operations under the relevant air service agreement.</i></p> <p><i>The Safety Article in the TASA applies to “aircraft operated by, or on behalf of, a designated airline of a Party” and consequently would cover leased aircraft with(wet) or without (dry) crew. In the Security Article the Parties “shall require that operators of aircraft of their registry or operators of aircraft who have their principal place of business or permanent residence in their territory” comply with security standards. This would not include some instances of the use of leased aircraft. Consequently States with a Safety Article of the TASA type in their bilaterals would use paragraph 1 without the bracketed word Safety. States without a TASA type Safety Article would include the bracketed word Safety.</i></p>

<b>Article 26 Leasing (cont'd)</b>	
<p style="text-align: center;"><b>[Paragraph 2, option 1 of 2]</b></p> <p>2. Subject to paragraph 1 above, the designated airlines of each Party may use aircraft leased from other airlines, provided all participants in such arrangements hold the appropriate authority and meet the requirements applied to such arrangements.</p> <p style="text-align: center;"><b>[Paragraph 2, option 2 of 2]</b></p> <p>2. Subject to paragraph 1 above, the designated airlines of each Party may use aircraft (or aircraft and crew ) leased from any company, including other airlines, provided that this would not result in a lessor airline exercising traffic rights it does not have.</p>	<p><i>As a practical matter a Party with safety concerns about a specific situation involving the use of leased aircraft may find it easier, at least initially, to consult with the Party whose airline has leased the aircraft, bearing in mind that the State of the lessor airline may not be a party to the agreement. In considering action under paragraph 1, States should first assess whether their safety concerns with leased aircraft have been addressed by the use of existing ICAO guidance and procedures which make clear the responsibility for continuing airworthiness and the adequacy of operating and maintenance standards in respect of such leased aircraft, taking into account relevant ICAO Standards and Recommended Practices (SARPS) and guidance such as the “Manual on Procedures for Operations, Inspection, Certification and Continued Surveillance” (Doc 8335), the “Airworthiness Manual” (Doc 9760), and the “Guidance on the Implementation of Article 83 bis of the Convention on International Civil Aviation” (Circular 295). In some cases the State should find it useful to consult the results of audits carried out under the ICAO Safety Oversight Audit Programme.</i></p> <p><i>Paragraph 2 provides a choice of two options for dealing with the primary economic concern of leasing situations – that a lessor airline might exercise traffic rights to which it is not entitled. Both options also recognize (by omission or by the wording used) that from an economic perspective, States generally permit or do not regulate aircraft leased from non-airline entities.</i></p>

<p><b>Article 27</b> <b>Intermodal services</b></p>	
<p><b>Traditional</b></p>	<p><i>In the traditional approach the filing and approval of intermodal passenger and cargo tariffs (e.g. air/rail, air/truck) implicitly recognized this form of intermodal transport .</i></p> <p><i>The transition stage includes such facilities as the use of airport customs facilities for surface cargo, transport under bond, carriage to or from any points in third countries and charging a single price for the intermodal transport (provided the shipper is not misled as to the facts of such transport).</i></p> <p><i>The inclusion of passengers and the phrase "without restriction" are the principle differences between the transition and full liberalization stages.</i></p>
<p>Each designated airline may use intermodal transportation if approved by the aeronautical authorities of both Parties.</p>	
<p><b>Transitional</b></p>	
<p>Each designated airline may employ their own or use others services for the surface transport of air cargo.</p>	
<p><b>Full liberalization</b></p>	
<p>[Option 1 of 2]</p>	
<p>Each designated airline may use surface modes of transport without restriction in conjunction with the international air transport of passengers and cargo.</p>	

<p><b>Article 27</b> <b>Intermodal services (cont'd)</b></p>	
<p style="text-align: center;">[Option 2 of 2]</p> <p>Notwithstanding any other provision of this Agreement, airlines and indirect providers of cargo transportation of both Parties shall be permitted, without restriction, to employ in connection with international air transportation any surface transportation for cargo to or from any points in the territories of the Parties or in third countries, including transport to and from all airports with customs facilities, and including, where applicable, the right to transport cargo in bond under applicable laws and regulations. Such cargo, whether moving by surface or by air, shall have access to airport customs processing and facilities. Airlines may elect to perform their own surface transportation or to provide it through arrangements with other surface carriers, including surface transportation operated by other airlines and indirect providers of cargo transportation. Such intermodal cargo services may be offered at a single, through price for the air and surface transportation combined, provided that shippers are not misled as to the facts concerning such transportation.</p>	<p><i>This provision is aimed at giving full service, capacity and pricing flexibility as well as access to customs and other facilities, to the various parties in an intermodal shipment of cargo. Such a provision is now inserted in many "open skies" agreements, particularly where the volume of trade by air between the parties warrants such a liberalizing provision.</i></p>

<b>Article 28</b> <b>Computer reservation systems (CRS)</b>	
<p style="text-align: center;"><b>[Option 1 of 3]</b></p> <p>Each Party shall apply the ICAO Code of Conduct for the Regulation and Operation of Computer Reservation Systems within its territory.</p> <p style="text-align: center;"><b>[Option 2 of 3]</b></p> <p>Each Party shall apply the ICAO Code of Conduct for the Regulation and Operation of Computer Reservation Systems within its territory consistent with other applicable regulations and obligations concerning computer reservation systems.</p> <p style="text-align: center;"><b>[Option 3 of 3]</b></p> <p>The Parties agree that:</p> <p>a) one of the most important aspects of the ability of an airline to compete is its ability to inform the public of its services in a fair and impartial manner, and that, therefore, the quality of information about airline services available to travel agents who directly distribute such information to the travelling public and the ability of an airline to offer those agents competitive computer reservations systems (CRSs) represent the foundation for an airline's competitive opportunities; and</p> <p>b) it is equally necessary to ensure that the interests of the consumers of air transport products are protected from any misuse of such information and its misleading presentation and that airlines and travel agents have access to effectively competitive computer reservations systems.</p>	<p><i>Some provisions refer to "designated airlines". Parties would need to consider whether the provisions on the activities contained in this Article should also be extended to all airlines of a Party rather than only designated ones.</i></p> <p><i>This alternative is an ICAO model for use, in particular, by Parties which may not have CRS regulations but are willing to apply the ICAO Code of Conduct for the Regulation and Operation of Computer Reservation Systems (see Doc 9587).</i></p> <p><i>This alternative applies the ICAO Code, but it is consistent with any other applicable regulations. (These could include the European Union, the European Civil Aviation Conference and the Arab Civil Aviation Commission CRS Codes, or national regulations. The reference to "obligations" recognizes that some States will apply the provisions of the General Agreement on Trade in Services (GATS) which has an Annex on Air Transport Services applicable to CRSs.)</i></p> <p><i>This alternative recognizes that some bilateral agreements set out in considerable detail the applicable principles to govern the regulation and operation of CRSs, usually because only one of the parties has extensive CRS regulations which are reflected in the detailed provisions of this type of article. However, given the rapidly evolving nature of airline product distribution, a less comprehensive approach may be more flexible and more easily applied to current conditions.</i></p>

<b>Article 29 Ban on smoking</b>	
<p>1. Each Party shall prohibit or cause their airlines to prohibit smoking on all flights carrying passengers operated by its airlines between the territories of the Parties. This prohibition shall apply to all locations within the aircraft and shall be in effect from the time an aircraft commences enplanement of passengers to the time deplanement of passengers is completed.</p> <p>2. Each Party shall take all measures that it considers reasonable to secure compliance by its airlines and by their passengers and crew members with the provisions of this Article, including the imposition of appropriate penalties for non-compliance.</p>	<p><i>This Article obligates each Party to prohibit smoking on all passenger flights by its airlines between the Parties, and to take reasonable measures to enforce this ban. The need for this provision would lessen as the practice of prohibiting smoking on flights spreads globally.</i></p>

<p style="text-align: center;"><b>Article 30</b> <b>Environmental Protection</b></p>	
<p>The Parties support the need to protect the environment by promoting the sustainable development of aviation. The Parties agree with regard to operations between their respective territories to comply with the ICAO Standards and Recommended Practices (SARPs) of Annex and the existing ICAO policy and guidance on environmental protection.</p>	<p><i>States may wish to consider the inclusion of an aviation environmental clause into their bilateral air services agreements to take into account the impact of air transport industry on the environment.</i></p>

<b>Article 31 Statistics</b>	
<b>Traditional</b>	
<p>The aeronautical authorities of each Party shall provide [or cause its designated airline or airlines to provide] the aeronautical authorities of the other Party, [upon request,] periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the capacity provided on the agreed services operated by the designated airline(s) of the first Party.</p>	<p><i>A provision on statistics is usually found in agreements which have either a pre-determination type or a Bermuda I type capacity regime. The principal difference in use of this alternative is that the furnishing of statistics is likely to be mandatory in the case of pre-determination, but “upon request” in the case of Bermuda I. The statistics may be furnished by the aeronautical authority, or alternatively, it may also provide that the designated airlines submit them . When the purpose is to review the capacity on the agreed routes, the origin and destination statistics would be required. Some agreements may specify the periodicity of the traffic period or the submission, such as monthly, if the submission is mandatory.</i></p>
<b>Transitional</b>	
<p>The aeronautical authorities of both Parties shall supply each other, on request, with periodic statistics or other similar information relating to the traffic carried on the agreed services.</p>	<p><i>This alternative may also be applied to pre-determination or Bermuda I arrangements but is more simple and does not spell out the purpose of the submission. It is therefore an approach that might be used in more liberal agreements where the need for statistics is not related to capacity control, but rather review.</i></p> <p><i>In some such agreements, a Party may require an airline to furnish data with respect to prices( tariff), for example, where there is an allegation of predatory pricing (see Article 17 Pricing (Tariffs), Dual disapproval, paragraph 2, alternative 2).</i></p>
<b>Full liberalization</b>	
	<p><i>“Open skies” agreements would not normally require the filing of any statistics.</i></p>

**Article 32**  
**Approval of schedules**

**Traditional**

1. The designated airline of each Party shall submit its envisaged flight schedules for approval to the aeronautical authorities of the other Party at least thirty (30) days prior to the operation of the agreed services. The same procedure shall apply to any modification thereof.

2. For supplementary flights which the designated airline of one Party wishes to operate on the agreed services outside the approved timetable, that airline must request prior permission from the aeronautical authorities of the other Party. Such requests shall usually be submitted at least two (2) working days prior to the operation of such flights.

*This provision is common to traditional agreements where capacity is determined by both Parties in advance. There is a requirement for the designated airlines to submit to the aeronautical authorities, prior to the operation of the services, the agreed flight schedules including timetables, the frequency of the services and the types of aircraft to be used, as well as any modifications or supplementary flights.*

*In some agreements, this provision could be covered in the Capacity Article.*

<b>Article 33 Consultations</b>	
<div style="text-align: center; border: 1px solid black; padding: 5px; margin: 10px auto; width: 80%;"> <b>Traditional</b> </div> <p>In the spirit of close cooperation, the aeronautical authorities of the Parties shall consult with each other from time to time with a view to ensuring the implementation of and satisfactory compliance with the provisions of this Agreement. Either Party may also request to hold a "High Level" meeting, up to Ministerial level, if and when deemed necessary, to advance the process of consultations.</p> <div style="text-align: center; border: 1px solid black; padding: 5px; margin: 10px auto; width: 80%;"> <b>Transitional and Full liberalization</b> </div> <ol style="list-style-type: none"> <li>1. Either Party may, at any time, request consultation on the interpretation, application, implementation or amendment of this Agreement or compliance with this Agreement.</li>   <li>2. Such consultations [which may be through discussion or by correspondence] shall begin within a period of 60 [30] days from the date the other Party receives a [written or oral] request, unless otherwise agreed by the Parties.</li> </ol>	<p><i>The consultation provision is normally general in scope and some issues, such as aviation security and safety, but also capacity and tariffs, as well as amendment of the agreement, may be subject to separate and specific consultation processes as regards purpose, time-frames and methods (e.g. exchange of documents).</i></p> <p><i>The consultation provision is based on a relatively standardised formula although there are a number of different approaches in wording with regard to the purpose of the consultation, the format of the consultation and the form of the request.</i></p> <p><i>In this approach, the consultation process can take the form of a regular process with the alternative to escalate the consultations to higher governmental levels.</i></p> <p><i>In this approach, the consultation process can be triggered by a request from either Party to address a specific issue. The "request" rather than the "time to time" formulation is more likely to be used in liberalized or "open skies" agreements, where the need for regular consultation may be considered to be less.</i></p> <p><i>The bracketed language in paragraph 2 is found in more recent agreements and takes into account modern communication methods which lessen the need for meetings between personnel of the Parties.</i></p>

**Article 34**  
**Settlement of disputes**

*At the bilateral level, the initial and most successful step in all basic approaches to the settlement of disputes is consultations and/or negotiations. Should that process fail to produce an agreement, or the Parties fail to reach a settlement of the dispute, then three alternatives are provided which includes settlement through diplomatic channels, arbitration and mediation, an intermediate step between consultation and arbitration. The three alternatives link the dispute settlement process to the bilateral agreement. (However, a broad fair and equal opportunity to compete clause has often been used to address situations not specifically covered by the agreement).*

**Traditional**

**Diplomatic channels**

[See alternatively two “Arbitration” approaches below]

1. Any dispute arising between the Parties relating to the interpretation or application of this Agreement [except those that may arise under Article \_ (Fair competition), Article \_ (Safety), Article \_ (Tariffs/Pricing)], the Parties shall in the first place endeavour to settle it by consultations and negotiation.
2. If the Parties fail to reach a settlement by negotiation, the dispute shall be settled through diplomatic channels.

*This provision takes into account an optional wording where there may be a separate consultation process with regard to the article on fair competition or with regard to the article on safety.*

*This approach relies on diplomatic channels if consultation fails to produce a settlement. It should be recognized that escalating a dispute to higher governmental levels may run the risk of a decision on other than air transport grounds.*

**Arbitration**

[See alternatively “Diplomatic channels” above or second “Arbitration” approach below]

1. Any dispute arising between the Parties relating to the interpretation or application of this Agreement [except those that may arise under Article \_ (Fair competition), Article \_ (Safety), Article \_ (Tariffs/Pricing)], the Parties shall in the first place endeavour to settle it by consultations and negotiation.

<b>Article 34 Settlement of disputes (cont'd)</b>	
<b>Traditional Arbitration</b>	
[See alternatively “Diplomatic channels” above or second “Arbitration” approach below] (cont'd)	
<p>2. If the Parties fail to reach a settlement through consultations, the dispute may, at the request of either Party, be submitted to arbitration in accordance with the procedures set forth below.</p>	<p><i>Should the process of consultations fail to produce an agreement, or the Parties fail to reach a settlement of the dispute, then this approach relies on settling disputes through arbitration. The arbitration process in bilateral air services agreements has rarely been used in practice, in part because of its costs and the time involved, though also because most disputes do not get beyond the stage of negotiation.</i></p>
<p>3. Arbitration shall be by a Tribunal of three arbitrators, one to be named by each Party and the third to be agreed upon by the two arbitrators so chosen, provided that the third such arbitrator shall not be a national of either Party. Each Party shall designate an arbitrator within a period of sixty (60) days from the date of receipt by either Party from the other Party of a diplomatic note requesting arbitration of the dispute, and the third arbitrator shall be agreed upon within a further period of sixty (60) days. If either of the Parties fails to designate its own arbitrator within the period of sixty (60) days or if the third arbitrator is not agreed on within the period indicated, the President of the Council of ICAO may be requested by either Party to appoint an arbitrator or arbitrators. If the President is of the same nationality as one of the Parties, the most senior Vice President who is not disqualified on that ground shall make the appointment.</p>	<p><i>The arbitration process is to provide for the establishment of a three person arbitration tribunal.</i></p>
<p>4. The arbitration tribunal shall determine its own procedure.</p>	<p><i>This alternative leaves it to the tribunal to establish its own procedures.</i></p>
<b>[Paragraph 5, option 1 of 2]</b>	
<p>5. Each Party shall [to the degree consistent with its national law] give full effect to any decision or award of the tribunal.</p>	<p><i>There are different approaches possible on the implementation of a tribunal decision. The arbitral tribunal may hold a conference on the issues to be decided, receive written and oral testimony from both Parties, establish a schedule for reaching a decision, and issue interpretations thereof; and a majority of the tribunal will be sufficient to issue a decision.</i></p>
<b>[Paragraph 5, option 2 of 2]</b>	
<p>5. The decision of the tribunal shall be binding on the Parties.</p>	

<p><b>Article 34</b> <b>Settlement of disputes (cont'd)</b></p>	
<p style="text-align: center;"><b>Traditional Arbitration</b> [See alternatively “Diplomatic channels” above or second “Arbitration” approach below] (cont'd)</p> <p style="text-align: center;">[Paragraph 6, option 1 of 2]</p> <p>6. The expenses of the tribunal shall be shared equally between the Parties.</p> <p style="text-align: center;">[Paragraph 6, option 2 of 2]</p> <p>6. Each Party shall bear the costs of the arbitrator appointed by it. The other costs of the tribunal shall be shared equally by the Parties, including any expenses incurred by the President of the Council of ICAO in implementing the procedures in paragraph 3 of this Article.</p> <p>7. If and so long as either Party fails to comply with any decision given under paragraph 3, the other Party may limit, withhold or revoke any rights or privileges which it has granted by virtue of this agreement to the Party in default or to the designated airline or airlines in default.</p>	<p><i>There are a number of variations as to the division of the expenses. For example, both Parties may equally share the expenses of the tribunal, or each Party may bear the costs of the arbitrator it appoints and share the other costs of the tribunal.</i></p>
<p style="text-align: center;"><b>Arbitration</b> [See alternatively, “Diplomatic channels” or first “Arbitration” approach above]</p> <p>1. Any dispute arising between the Parties relating to the interpretation or application of this Agreement [except those that may arise under Article _ (Fair competition), Article _ (Safety), Article _ (Tariffs/Pricing)], the Parties shall in the first place endeavour to settle it by consultations and negotiation.</p> <p>2. If the Parties fail to reach a settlement through consultations, the dispute may, at the request of either Party, be submitted to arbitration in accordance with the procedures set forth below.</p>	<p><i>Should the process of consultations fail to produce an agreement, or the Parties fail to reach a settlement of the dispute, then this approach relies on settling disputes through arbitration. The arbitration process in bilateral air services agreements has rarely been used in practice, in part because of its costs and the time involved, though also because most disputes do not get beyond the stage of negotiation.</i></p>

<b>Article 34</b> <b>Settlement of disputes (cont'd)</b>	
<b>Traditional Arbitration</b> [See alternatively, "Diplomatic channels" or first "Arbitration" approach above] (cont'd)	
<p>3. Arbitration shall be by a Tribunal of three arbitrators, one to be named by each Party and the third to be agreed upon by the two arbitrators so chosen, provided that the third such arbitrator shall not be a national of either Party. Each Party shall designate an arbitrator within a period of sixty (60) days from the date of receipt by either Party from the other Party of a diplomatic note requesting arbitration of the dispute, and the third arbitrator shall be agreed upon within a further period of sixty (60) days. If either of the Parties fails to designate its own arbitrator within the period of sixty (60) days or if the third arbitrator is not agreed on within the period indicated, the President of the Council of ICAO may be requested by either Party to appoint an arbitrator or arbitrators. If the President is of the same nationality as one of the Parties, the most senior Vice President who is not disqualified on that ground shall make the appointment.</p> <p>4. Except as otherwise agreed, the arbitration tribunal shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedure. At the direction of the tribunal or at the request of either of the Parties, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held no later than fifteen (15) days after the tribunal is fully constituted.</p> <p>5. Except as otherwise agreed by the Parties or prescribed by the tribunal, each Party shall submit a memorandum within forty-five (45) days of the time the tribunal is fully constituted. Replies shall be due sixty (60) days later. The tribunal shall hold a hearing at the request of either Party or at its discretion within fifteen (15) days after replies are due.</p>	<p><i>The arbitration process is to provide for the establishment of a three person arbitration tribunal.</i></p> <p><i>This alternative leaves it to the tribunal to establish its own procedures, including the appointment process for the arbitrators, with time-frames, to be followed.</i></p>

**Article 34**  
**Settlement of disputes (cont'd)**

6. The tribunal shall attempt to render a written decision within thirty (30) days after completion of the hearing or, if no hearing is held, after the date both replies are submitted. The decision of the majority of the tribunal shall prevail.

**Traditional  
Arbitration**

[See alternatively, “Diplomatic channels” or first  
“Arbitration” approach above]  
(cont'd)

7. The Parties may submit requests for clarification of the decision within fifteen (15) days after it is rendered and any clarification given shall be issued within fifteen (15) days of such request.

[Paragraph 8, option 1 of 2]

8. Each Party shall [to the degree consistent with its national law] give full effect to any decision or award of the tribunal.

[Paragraph 8, option 2 of 2]

8. The decision of the tribunal shall be binding on the Parties.

[Paragraph 9, option 1 of 2]

9. The expenses of the tribunal shall be shared equally between the Parties.

[Paragraph 9, option 2 of 2]

9. Each Party shall bear the costs of the arbitrator appointed by it. The other costs of the tribunal shall be shared equally by the Parties, including any expenses incurred by the President of the Council of ICAO in implementing the procedures in paragraph 4 of this Article.

10. If and so long as either Party fails to comply with any decision given under paragraph 3, the other Party may limit, withhold or revoke any rights or privileges which it has granted by virtue of this agreement to the Party in default or to the designated airline or airlines in default.

<b>Article 34 Settlement of disputes (cont'd)</b>	
<div style="border: 1px solid black; padding: 5px; display: inline-block;"> <b>Transitional and Full liberalization</b> </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 bilateral 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>1. Any dispute arising between the Parties relating to the interpretation or application of this Agreement [except those that may arise under Article _ (Fair competition), Article _ (Safety), Article _ (Tariffs/Pricing)], the Parties shall in the first place endeavour to settle it by consultations and negotiation.</p> <p>2. Any dispute which cannot be resolved by consultations, 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><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>“Open skies” agreements also include a similar recourse to refer disputes “for decision to some person or body”.</i></p>

**Article 34**  
**Settlement of disputes (cont'd)**

3. 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.

**Transitional and Full liberalization (cont'd)**

4. 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.

5. 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.

6. 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.

*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.*

*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 minimising legal formalities and procedural time-frames, yet allowing adequate time for the panel to arrive at a decision or determination.*

<b>Article 34 Settlement of disputes (cont'd)</b>	
<p>7. 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>8. The mechanism is without prejudice to the continuing use of the consultation process, the subsequent use of arbitration, or Termination under Article _.</p> <p style="text-align: center;"><b>Transitional and Full liberalization (cont'd)</b></p> <p>9. If the Parties fail to reach a settlement through mediation, the dispute may, at the request of either Party, be submitted to arbitration in accordance with the procedures set forth below.</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><i>The arbitration procedures are the same as outlined in the traditional text.</i></p>

<b>Article 35 Amendments</b>	
<p>1. Either Party may at any time request consultation with the other Party for the purpose of amending the present Agreement [or its Annex] [or its Route Schedule]. Such consultation shall begin within a period of sixty (60) days from the date of receipt of such request. [Such consultations may be conducted through discussion or by correspondence.]</p>	<p><i>The amendment or modification provision in an agreement may take a variety of forms. The variety arises because of differing treatment of air services agreements (whether treaty or executive agreement) and the differing constitutional procedures applied to the approval of such agreements and their amendments. Sometimes the amendment process in an agreement is dealt with in the context of the consultation provision since the negotiation of an amendment may be seen as merely another matter for consultation.</i></p> <p><i>This alternative takes a more detailed approach. It includes a time frame of 60 days for the start of the consultations; optional wording at the end of paragraph 1 enables the consultation process to be in writing.</i></p>
<p>2. Any amendment shall enter into force when confirmed by an exchange of diplomatic notes.</p>	<p><i>As regards the date of coming into force, practices differ widely, although the most common approach is to give effect to amendments when there has been an exchange of diplomatic notes.</i></p>
<p style="text-align: center;"><b>[Paragraph 3, option 1 of 2]</b></p> <p>3. Any amendment of the [Annex] [Route schedule] may be made by written agreement between the aeronautical authorities of the Parties and shall come into force when confirmed by an exchange of diplomatic notes.</p>	<p><i>In order to provide greater flexibility for amending the route schedule, paragraph 3 allows the consultation and amendment process to take place between the aeronautical authorities.</i></p>
<p style="text-align: center;"><b>[Paragraph 3, option 2 of 2]</b></p> <p>3. Any amendments of this Agreement agreed by the Parties shall come into effect when confirmed by an exchange of diplomatic notes.</p>	<p><i>This alternative takes a more simple approach and does not address the amendment procedure, it simply addresses the coming into force of any agreed amendment. In such an approach it would be presumed that the amendment procedure to be followed would be that of the agreement's general consultation process.</i></p>

<b>Article 36</b> <b>Multilateral agreements</b>	
<p data-bbox="418 1129 581 1161" style="text-align: center;"><b>[Option 1 of 2]</b></p> <p data-bbox="203 1192 800 1365">If a multilateral agreement concerning air transport comes into force in respect of both Parties, the present Agreement shall be [deemed to be] amended so as [so far as is necessary] to conform with the provisions of that multilateral agreement.</p> <p data-bbox="418 1539 581 1570" style="text-align: center;"><b>[Option 2 of 2]</b></p> <p data-bbox="203 1585 800 1757">If both Parties become parties to a multilateral agreement that addresses matters covered by this agreement, they shall consult to determine whether this agreement should be revised to take into account the multilateral agreement.</p>	<p data-bbox="824 289 1421 672"><i>This provision concerning the effect on the bilateral agreement of any multilateral agreement that may come into effect for both Parties has been inserted in most bilateral agreements over the years in anticipation of progress towards a broad multilateral air transport agreement for the exchange of traffic rights; in the absence of such an agreement it nevertheless continues to be relevant with respect to more limited regional and plurilateral agreements.</i></p> <p data-bbox="824 718 1421 1066"><i>From the bilateral perspective there are at least two options for taking into account that Parties to a bilateral may subsequently become Parties to a multilateral agreement that deals with the same matters as the bilateral: either amend the bilateral to conform to the multilateral or consult on whether this needs to be done. (Different options are presented from the multilateral perspective; these are discussed in the Regional/Plurilateral TASA).</i></p> <p data-bbox="824 1192 1421 1470"><i>The unbracketed text in this alternative commits the Parties to amend the bilateral to conform the multilateral agreement using the normal amendment procedure. The bracketed text eliminates the need for the normal amendment procedure but adds a limitation “so far as is necessary” on the extent of amendment of the bilateral.</i></p> <p data-bbox="824 1585 1421 1722"><i>This alternative allows the Parties to decide, after consultations, whether the bilateral should be revised to take into account the multilateral agreement.</i></p>

<b>Article 37 Termination</b>	
<p>Either Party may, at any time, give notice in writing, through diplomatic channels, to the other Party of its [intention] [decision] to terminate this Agreement. Such notice shall be simultaneously communicated to ICAO. This Agreement shall terminate [at midnight (at the place of receipt of the notice) immediately before the first anniversary of] [twelve months after] the date of receipt of the notice by the other Party, unless the notice is withdrawn by agreement before the end of this period. [In the absence of acknowledgement of receipt by the other Party, the notice shall be deemed to have been received fourteen (14) days after receipt of the notice by ICAO].</p>	<p><i>The termination or withdrawal provision (also called denunciation) is fairly standard in format although some variations in wording exist. The main variation is the optional wording in brackets, in the final sentence, to cover a situation where the Party receiving the notice of termination does not acknowledge receipt - in that case receipt is deemed to have taken place 14 days after receipt of the notice by ICAO. Termination provisions normally require 12 months notice before the termination comes into effect although a shorter period may be agreed.</i></p>

<p style="text-align: center;"><b>Article 38</b> <b>Registration with ICAO</b></p>	
<p>This Agreement and any amendment thereto shall be registered upon its signature with the International Civil Aviation Organization by (<i>name of the registering Party</i>).</p>	<p><i>Articles 81 and 83 of the Convention obligate States to register their aeronautical agreements and the above provision formalises this requirement at the bilateral level. However, in practice, many agreements and amendments are not registered, a fact which has a negative impact on the transparency of the whole process. This clause developed by ICAO includes the requirement to register upon signature the name of the Party responsible for registering the agreement and is intended to encourage better compliance with the registration requirement.</i></p>

<b>Article 39 Entry into force</b>	
<b>[Option 1 of 2]</b>	
<p>This Agreement shall [be applied provisionally from the date of its signature and shall] enter into force [thirty (30) days after both Parties have notified each other through diplomatic channels that their constitutional procedures for the entry into force of this agreement have been completed] [from the date on which the exchange of diplomatic notes between the Parties has been completed].</p>	<p><i>The two basic approaches to an entry into force provision presented above involve, in the first alternative, an anticipated ratification process and, in the second alternative, a simple and immediate entry into force upon signature. In the former the Parties may wish to allow for protracted constitutional formalities by enabling the agreement to provisionally enter into force upon signature. There are a number of formulae for the date of entry into force following such formalities and two are included in the first alternative. The choices made on the wording of this final provision will largely depend on the respective national processes of the Parties for giving effect to their air services agreements.</i></p>
<b>[Option 2 of 2]</b>	
<p>This Agreement shall enter into force on the date of signature.</p>	



<b>Annex I</b> <b>Route schedules (cont'd)</b>	
<b>Transitional</b> [Option 2 of 3] (cont'd)	
<b>B. Routes to be operated by the designated airline (or airlines) of Party B:</b>	
<ol style="list-style-type: none"> <li>1. From points behind Party B via Party B and intermediate points to any point or points in Party A and beyond.</li> <li>2. For all-cargo service(s), between Party A and any point or points.</li> </ol>	
[Option 3 of 3]	
<b>A. Routes to be operated by the designated airline (or airlines) of Party A:</b>	<i>This transition adds Seventh Freedom for passenger services and limited cabotage which could take two forms. First, a domestic segment operated in conjunction with an international one (used by the European Union for several years in its transition to a single European market) or where two points with international services in a Party are co-terminalized (e.g. both points served by the same flight) by a designated airline of the other party and domestic air transportation is permitted between those two points.</i>
From points to and from the territory of Party B with limited cabotage.	
<b>B. Routes to be operated by the designated airline (or airlines) of Party B:</b>	
From points to and from the territory of Party A with limited cabotage.	
<b>Full liberalization</b>	
<b>A. Routes to be operated by the designated airline (or airlines) of Party A:</b>	<i>Full liberalization opens all international as well as the domestic markets of the parties. European Community air carriers have this type of market access within the European Union.</i>
Points to, from and within the territory of Party B.	
<b>B. Routes to be operated by the designated airline (or airlines) of Party B:</b>	
Points to, from and within the territory of Party A.	
<b>Section 2</b> Operational flexibility	<i>Some of these provisions may be relevant to only one or more approach(es).</i>
The designated airlines of either Party may, on any or all flights and at its option:	
<ol style="list-style-type: none"> <li>1. operate flights in either or both directions;</li> <li>2. combine different flight numbers within one aircraft operation;</li> </ol>	

<p style="text-align: center;"><b>Annex I</b> <b>Route schedules (cont'd)</b></p>	
<p>3. serve intermediate and beyond points in the territories of the Parties on the routes in any combination and in any order;</p> <p>4. omit stops at any point or points;</p>	
<p style="text-align: center;"><b>Full liberalization (cont'd)</b></p>	
<p><b>Section 2 (cont'd)</b></p>	
<p>5. transfer traffic (including codesharing operations) from any of its aircraft to any of its other aircraft at any point on the routes; and</p> <p>6. serve points behind any point in its territory with or without change of aircraft or flight number and may hold out and advertise such services to the public as through services;</p> <p>without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under the present Agreement; provided that, (with the exception of all-cargo services) the service serves a point in the territory of the Party designating the airlines.</p>	<p><i>Notwithstanding Article _ (Change of Gauge) of this Agreement, airlines shall be permitted to transfer traffic between aircraft involved in codesharing operations without limitation.</i></p>

<p style="text-align: center;"><b>Annex II</b> <b>Non-scheduled/Charter operations</b></p>	
<p style="text-align: center;"><b>Traditional</b></p> <p>1. The provisions of this Agreement, except those dealing with Traffic Rights, Capacity and Tariffs shall be applicable also to non-scheduled flights operated by an air carrier of one Party into or from the territory of the other Party and to the air carrier operating such flights.</p> <p style="text-align: center;">[Paragraph 2, option 1 of 2]</p> <p>2. The provisions of paragraph 1 of this Article shall not affect national laws and regulations governing the authorization of non-scheduled operations or to the conduct of air carriers or other parties involved in the organization of such operations.</p>	<p><i>A provision on non-scheduled operations may be dealt with in a variety of ways and contexts in an agreement. Basically it may be treated as a grant of rights matter or a matter for separate regulatory attention. It may be in the body of the Agreement or in an Annex.</i></p> <p><i>A simpler and more direct approach to the grant of rights for non-scheduled operations would be simply to refer in the grant of rights article to the conduct of “international air services” rather than “scheduled international air services”. In this way all the provisions of the agreement would be applicable to both scheduled and non-scheduled services.</i></p> <p><i>This approach may be used when the Parties anticipate the possibility of non-scheduled operations, need to identify the various administrative and commercial opportunity provisions that would be applied to those operations, but wish to take no position on whether authorization would be granted under their respective national laws and regulations. This provision makes clear that the provisions of the main agreement other than those designed for scheduled air services will apply to non-scheduled air services. Alternatively, this clause could list the Articles in the main agreement that would apply to non-scheduled services, e.g. User Charges, Customs Duties, Safety, Security, etc.</i></p> <p><i>The provision leaves to Each Party’s national law and regulation the determination of which non-scheduled services would be permitted and under what conditions.</i></p>

<b>Annex II</b>		
<b>Non-scheduled/Charter operations (cont'd)</b>		
<p style="text-align: center;">[Paragraph 2, option 2 of 2]</p> <p>2. Each Party shall give sympathetic consideration to applications for [non-scheduled flights] [charter flights] between their territories for passengers and cargo in accordance with their respective laws and regulations.</p>	<p><i>The requirement to give “sympathetic consideration” is not a grant of market access but implies a positive treatment to non-scheduled operations in general or, more specifically charter flights. This provision also reflects the fact that the regulatory regime governing authorization for such operations is generally unilateral, with the destination State or States applying their national rules to any applicant.</i></p>	
<table border="1" style="margin: auto;"> <tr> <td style="padding: 5px;"><b>Transitional</b></td> </tr> </table>		<b>Transitional</b>
<b>Transitional</b>		
<p style="text-align: center;">[Option 1 of 3]</p> <p>1. Each Party shall authorize non-scheduled passenger flights between points at which no established scheduled air services exist. In cases where such scheduled services exist, authorizations shall be granted provided the offer of non-scheduled flights does not endanger the economic stability of existing scheduled services.</p> <p>2. When series of non-scheduled passenger flights are requested, these must correspond to the definition of "inclusive package tours" and must be carried out on a round trip basis, with pre-established departures and returns.</p>	<p><i>This approach has no adverse impact on scheduled services.</i></p> <p><i>Historically, many States were concerned with preventing non-scheduled passenger services from having an adverse impact on scheduled services and a wide variety of policies and mechanisms were developed to address this issue (see Doc 9587). Three such mechanisms are contained in this text: 1) authorizing non-scheduled passenger services between points not served by scheduled services (usually referred to as “off-route charters”) 2) not permitting non-scheduled passenger services which would adversely impact on scheduled services, and 3) authorizing types of non-scheduled passenger services (in this case inclusive tour charters which include a ground package of services such as hotels, land transport, etc in addition to air transport) which are not regarded as endangering the economic viability of scheduled services.</i></p>	

<b>Annex II</b>	
<b>Non-scheduled/Charter operations (cont'd)</b>	
<b>[Option 2 of 3]</b>	
<p>1. The airlines of each Party designated pursuant to this Agreement to operate under this Annex shall have the right to operate non-scheduled international air transport over the routes specified and in accordance with the rights granted for scheduled services in this Agreement.</p> <p>2. Each Party shall extend favourable consideration to applications by airlines of the other Party to carry traffic not covered by this Annex on the basis of comity and reciprocity.</p>	<p><i>This transitional approach opens the routes in the agreement to non-scheduled services, under the same conditions (e.g. change of gauge) for scheduled services, while off-route non-scheduled services are approved/disapproved on the basis of comity and reciprocity. Depending on the grant of rights for scheduled services this would normally open non-scheduled services to both passengers and cargo.</i></p> <p><i>The use of “comity and reciprocity” results in the amount and type of off-route charters being based on the Party with the most restrictive view of such charters.</i></p>
<b>Transitional (cont'd)</b>	
<b>[Option 3 of 3]</b>	
<p>1. The [designated] airlines of one Party shall, in accordance with the terms of their designation and of the Route Schedule at Annex _ ,] be entitled to perform international non-scheduled air transportation to and from any point or points in the territory of the other Party, either directly or with stop-overs en route, for one-way or round trip carriage of any traffic to or from a point or points in the territory of the Party which has designated the airline. Multi-destination charters shall also be permitted. In addition, [designated] airlines of one Party may operate charters with traffic originating in or destined for the territory of the other Party.</p>	<p><i>In this approach, although the regulatory regime governing non-scheduled operations, and particularly charter type operations, is usually that of the destination State, the Parties to some agreements may choose to stipulate that the rules of the country of origin of the operation should be applied. This should facilitate the conduct of these operations. This is therefore an example of such an arrangement which could be used in a liberal agreement, though it nevertheless requires compliance with rules.</i></p> <p><i>Paragraph 1 spells out a broad market access for these operations whereas the second paragraph applies the country of origin rules.</i></p>

<b>Annex II</b>	
<b>Non-scheduled/Charter operations (cont'd)</b>	
<p>2. Each [designated] airline performing air transportation under this provision shall comply with such laws, regulations and rules of the Party in whose territory the traffic originates, whether on a one-way or round trip basis, as that Party now or hereafter specifies shall be applicable to such transportation.</p>	<p><i>The text with bracketed language is used where the Route schedule at Annex___is not city specific and where the Parties designate airlines for non-scheduled services. Without the bracketed language all airlines of each Party (whether or not they are also designated for scheduled services) would be authorized by the other Party to perform the non-scheduled services described in the first paragraph.</i></p>
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"><b>Full liberalization</b></div>	<p><i>The full liberalization approach is an option for States which might wish to liberalize non-scheduled services while continuing to regulate scheduled services. This approach may be found in liberal or “open skies” agreements. Its conditions are minimal.</i></p>
<p><b>Full liberalization (cont'd)</b></p>	
<p><b>Section 1</b></p> <p>Airlines of each Party designated under this Annex shall, in accordance with the terms of their designation, have the right to carry international charter traffic of passengers (and their accompanying baggage) and/or cargo (including, but not limited to, freight forwarder, split, and combination (passenger/cargo) charters):</p> <p>Between any point or points in the territory of the Party that has designated the airline and any point or points in the territory of the other Party; and</p> <p>Between any point or points in the territory of the other Party and any point or points in a third country or countries, provided that, except with respect to cargo charters, such service constitutes part of a continuous operation, with or without a change of aircraft, that includes service to the homeland for the purpose of carrying local traffic between the homeland and the territory of the other Party.</p>	<p><i>It equates non-scheduled with scheduled services in terms of rights and market access, and without the necessity of compliance with the national regulations of the destination Party, but in the first paragraph limits this to the designated airlines of each party. It also contains a provision for favourable consideration to be given to non-scheduled operations not covered by the rights granted under the first paragraph, for example, services by airlines not designated to provide scheduled services or seventh freedom passenger services.</i></p> <p><i>A difference between the previous transitional approach and full liberalization is the ability of the designated airline to choose either the charter rules of its own country or that of the other Party for the operation of its non-scheduled services.</i></p>

**Annex II****Non-scheduled/Charter operations (cont'd)**

In the performance of services covered by this Annex, airlines of each Party designated under this Annex shall also have the right: (1) to make stopovers at any points whether within or outside of the territory of either Party; (2) to carry transit traffic through the other Party's territory; (3) to combine on the same aircraft traffic originating in one Party's territory, traffic originating in the other Party's territory, and traffic originating in third countries; and (4) to 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, except with respect to cargo charters, in the outbound direction, 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.

Each Party shall extend favourable consideration to applications by airlines of the other Party to carry traffic not covered by this Annex on the basis of comity and reciprocity.

**Full liberalization (cont'd)****Section 2**

Any airline designated by either Party performing international charter air transportation originating in the territory of either Party, whether on a one-way or round-trip basis, shall have the option of complying with the charter laws, regulations, and rules either of its homeland or of the other Party. If a Party applies different rules, regulations, terms, conditions, or limitations to one or more of its airlines, or to airlines of different countries, each designated airline shall be subject to the least restrictive of such criteria.

<b>Annex II</b>	
<b>Non-scheduled/Charter operations (cont'd)</b>	
<p>However, nothing contained in the above paragraph shall limit the rights of either Party to require airlines designated under this Annex by either Party to adhere to requirements relating to the protection of passenger funds and passenger cancellation and refund rights.</p>	
<b>Section 3</b>	
<p>Except with respect to the consumer protection rules referred to in the preceding paragraph above, neither Party shall require an airline designated under this Annex by the other Party, in respect of the carriage of traffic from the territory of that other Party or of a third country on a one-way or round-trip basis, to submit more than a declaration of conformity with the applicable laws, regulations and rules referred to under section 2 of this Annex or of a waiver of these laws, regulations, or rules granted by the applicable aeronautical authorities.</p>	

**Annex III**  
**Air cargo services**

**Transitional**

Every designated airline when engaged in the international transport of air cargo

- a) shall be accorded non-discriminatory treatment with respect to access to facilities for cargo clearance, handling, storage, and facilitation;
- b) may use and/or operate directly other modes of transport;
- c) may use leased aircraft, provided that such operation complies with the safety and security standards applied to other aircraft of designated airlines;
- d) may enter into cooperative arrangements with other air carriers including, but not limited to, codesharing, blocked spaced, and interlining; and
- e) may determine its own cargo tariffs which shall not be required to be filed with the aeronautical authorities of either Party.

*Some agreements provide no specific provision on all-cargo operations as the right to operate all-cargo services is usually implicit in the grant of rights wherein the Parties typically grant the right for their designated airlines to transport passengers, cargo and mail on the agreed scheduled international air services. However, other agreements are more specific, referring to “passengers, cargo and mail or in any combination”. The agreement may in the route schedule specify particular routes, including restrictions or flexibility as agreed, for all-cargo services, or the routes may be those exchanged for scheduled passenger services.*

*The purpose of this paragraph is to achieve a fair competitive balance between all air carriers engaged in the transport of international air cargo. Where the main agreement contains a provision which also appears in the Annex (for example, leasing), that provision should be omitted from the Annex.*

<p><b>Annex III</b> <b>Air cargo services (cont'd)</b></p>	
<p><b>Full liberalization</b></p>	<p><i>This paragraph provides the Third through the Seventh Freedoms of the air for only all cargo services operated on a scheduled or non-scheduled basis. The first two Freedoms ! overflight and technical stops ! are not included as they are normally provided in the main agreement. Operational flexibility is described in general terms and includes those elements generally regarded as important for all cargo operations.</i></p> <p><i>The Annex on air cargo services is unlikely to be used in full liberalization and more recent “open skies” agreements in which the rights and operational flexibility in this Annex will be in the main agreement.</i></p>
<p>Every designated airline when engaged in all cargo transportation as scheduled or non-scheduled services may provide such services to and from the territory of each Party, without restriction as to frequency, capacity, routing, type of aircraft, and origin or destination of cargo.</p>	

<b>Annex IV Transitional measures</b>	
<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"> <li>1. Notwithstanding the provisions of Article ____ (or Annex ____), the designated airline (or airlines) of Party A (or each Party) may (shall) .....</li>   <li>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"> <li>a) From (date) through (date), ....., and</li> <li>b) From (date) through (date), .....</li> </ol> </li> </ol>	<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>

<b>Annex IV</b> <b>Transitional measures (cont'd)</b>	
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 a double disapproval regime, a country-of-origin regime would govern pricing until a specific date.</i>

— END —